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GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5

THE PORT OF PORTLAND

And

PORTLAND BULK TERMINALS, L.L.C.

Effective Date:

March 14, 1996

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## TABLE OF CONTENTS

SECTION 1	AGREEMENT TO LEASE PROPERTY . . . . .	1
1.1	Agreement to Lease and Description of Property . .	1
1.1.1	Bond Financed Improvements and Facilities Lease . . . . .	1
1.2	Lease Guarantee . . . . .	2
1.3	Use of Property . . . . .	2
1.3.1	Permitted Use . . . . .	2
1.3.2	License for Preferential Use of Berth 503 . .	3
1.3.3	Port's Secondary Berthing Rights . . . . .	3
1.3.4	Terminal Tariff and Dockage Charges . . . . .	3
1.3.5	Compliance with All Laws . . . . .	4
1.3.6	Appurtenant Rights . . . . .	4
SECTION 2	TERM . . . . .	4
2.1	Lease Term . . . . .	4
2.2	Lease Renewal Option . . . . .	4
2.3	Option to Purchase Improvements at End of Lease . .	5
2.3.1	Fair Market Value . . . . .	5
2.4	Option for New Lease . . . . .	6
2.5	Exercise of Option for New Lease . . . . .	6
2.6	Early Termination Option . . . . .	6
SECTION 3	RENT . . . . .	7
3.1	Rental Commencement . . . . .	7
3.2	Basic Rent Amount . . . . .	7
3.3	Reduced Rent Period . . . . .	8
3.4	Adjustment to the Basic Rent . . . . .	8
3.4.1	Formula . . . . .	8
3.4.2	CPI-U Cap for Calculation of Basic Rent . .	9
3.4.3	Change in Index . . . . .	9
3.5	Time and Place of Rent Payments . . . . .	9
3.6	Common Area Assessment . . . . .	10
3.7	Security Deposit . . . . .	11
3.8	Taxes . . . . .	12
3.8.1	Payment In Lieu of Taxes . . . . .	12
3.9	Delinquency and Administrative Charges . . . . .	13
3.10	Acceptance of Rent . . . . .	13
SECTION 4	LESSEE'S OTHER OBLIGATIONS . . . . .	14
4.1	Construction of Lessee Improvements . . . . .	14
4.1.1	Port Approval . . . . .	14
4.1.2	Permits . . . . .	15
4.1.3	Construction Schedule . . . . .	15
4.1.4	Failure to Complete Construction . . . . .	15
4.2	Maintenance . . . . .	15
4.2.1	General . . . . .	15
4.2.2	Other Maintenance, Development and Landscaping Standards . . . . .	16
4.2.3	Conduct of Business . . . . .	16

4.3	Force Majeure . . . . .	16
4.4	No Liens . . . . .	17
4.5	Utilities and Services . . . . .	17
4.6	Signs . . . . .	17
4.7	Port Access to Property . . . . .	17
4.8	Security . . . . .	18
4.9	Maintenance of Existence . . . . .	18
SECTION 5	PORT RIGHTS, REPRESENTATIONS & OBLIGATIONS . .	18
5.1	Delivery of Property . . . . .	18
5.2	Condition of Property . . . . .	18
5.3	Port Construction, Repair and Maintenance Obligations . . . . .	19
5.3.1	Roadways and Common Areas . . . . .	19
5.3.2	Dock Repair and Dredging . . . . .	19
5.3.3	Rent Abatement During Repairs . . . . .	20
5.3.4	Limitation on Damages, Rent Abatement . . . . .	20
5.3.5	Lessee's Right to Repair . . . . .	22
5.4	Rail Track Location and Use . . . . .	22
5.5	Port Authority Over Common Areas . . . . .	22
5.6	Audit Rights . . . . .	23
SECTION 6	ENVIRONMENTAL OBLIGATIONS OF LESSEE . . . . .	23
6.1	General . . . . .	23
6.2	Definitions. . . . .	23
6.2.1	"Environmental Laws" . . . . .	23
6.2.2	"Hazardous Substances" . . . . .	24
6.2.3	"Environmental Costs" . . . . .	24
6.3	Initial Environmental Audit and Periodic Scheduled Audits . . . . .	24
6.4	Limited Business Use of Hazardous Substances . . . . .	25
6.5	Environmental Inspection . . . . .	26
6.6	Safety . . . . .	27
6.7	Disposal of Hazardous Substances . . . . .	27
6.8	Notice to Port . . . . .	27
6.9	Environmental Remediation . . . . .	28
6.10	Annual Certification . . . . .	28
6.11	Documentation of Hazardous Substances . . . . .	29
6.12	Hazardous Substance Contamination Caused by Port or Other Port Invitees in Access Corridor . . . . .	29
SECTION 7	INDEMNITY, INSURANCE . . . . .	29
7.1	Lessee's General Indemnity . . . . .	29
7.2	Port's General Indemnity . . . . .	30
7.3	Lessee's Environmental Indemnity . . . . .	30
7.4	Port's Environmental Indemnity . . . . .	31
7.5	Insurance Requirements . . . . .	31
7.5.1	General . . . . .	32
7.5.2	Additional Insured/Loss Payee . . . . .	32
7.5.3	Primary Coverage . . . . .	32

7.5.4	Carrier Rating . . . . .	32
7.5.5	Periodic Review . . . . .	32
7.6	Required Insurance . . . . .	33
7.6.1	Liability Insurance . . . . .	33
7.6.2	Property Insurance . . . . .	33
7.6.3	Workers' Compensation Insurance . . . . .	33
7.7	Port Dock Insurance . . . . .	33
7.8	Waiver of Subrogation . . . . .	33
SECTION 8	DAMAGE OR DESTRUCTION . . . . .	34
8.1	General Policy . . . . .	34
8.2	Excess Proceeds After Restoration . . . . .	34
8.3	Other Options Following Damage/Destruction . . . . .	34
8.4	Division of Proceeds Upon Termination . . . . .	35
8.5	Prerequisites to Termination . . . . .	36
8.6	Reconstruction Renewal Right . . . . .	36
SECTION 9	TERMINATION OF LEASE . . . . .	36
9.1	Duties on Termination . . . . .	36
9.2	Lessee's Personal Property . . . . .	37
9.3	Time for Removal . . . . .	38
9.4	Holding Over . . . . .	38
9.5	Exit Audit and Remediation . . . . .	38
SECTION 10	DEFAULT . . . . .	40
10.1	Event of Default . . . . .	40
10.1.1	Default in Rent . . . . .	40
10.1.2	Default of Environmental Covenants . . . . .	41
10.1.3	Default in Other Covenants . . . . .	41
10.1.4	Default in Other Agreements . . . . .	41
10.1.5	Insolvency . . . . .	42
10.1.6	Involuntary Proceedings . . . . .	42
10.1.7	Default by Guarantor . . . . .	43
10.2	Repeat Violations . . . . .	43
10.3	Emergency Relief . . . . .	43
10.4	Remedies on Default . . . . .	44
10.4.1	Termination of Lease . . . . .	44
10.4.2	Re-entry and Reletting . . . . .	44
10.4.3	Rent Recovery . . . . .	45
10.4.4	Recovery of Damages . . . . .	45
10.4.5	Acceleration of Bonds . . . . .	46
10.4.6	No Remedy Exclusive . . . . .	46
10.4.7	No Implied Waiver . . . . .	46
10.4.8	Reimbursement of Attorney's Fees . . . . .	46
10.5	Curing Lessee's Default . . . . .	46
10.6	Default by Port . . . . .	47
SECTION 11	ASSIGNMENT, SUBLEASE, MORTGAGE AND TRANSFER . . . . .	47
11.1	General Prohibition . . . . .	47
11.2	Preapproved Assignment/Sublease . . . . .	48

11.3	Effect of Consent . . . . .	48
11.4	Transfer by the Port . . . . .	49
11.5	Estoppel Certificates . . . . .	49
SECTION 12	EMINENT DOMAIN . . . . .	50
12.1	General . . . . .	50
12.2	Definitions . . . . .	50
12.2.1	"Date of Taking" . . . . .	50
12.2.2	"Partial Taking" . . . . .	50
12.2.3	"Total Taking" . . . . .	50
12.2.4	"Facilities Award" . . . . .	51
12.2.5	"Taking Award" . . . . .	51
12.3	Total Taking . . . . .	51
12.4	Partial Taking . . . . .	51
12.5	Total Taking Facilities Award . . . . .	51
12.6	Partial Takings Facilities Award . . . . .	51
12.7	No Port or Trustee Liability . . . . .	52
12.8	Use of Facilities Award . . . . .	52
12.9	Taking Award Distribution . . . . .	52
12.10	Effect of Termination . . . . .	53
SECTION 13	GENERAL PROVISIONS . . . . .	53
13.1	Covenants, Conditions, and Restrictions . . . . .	53
13.2	Governing Law . . . . .	53
13.3	No Benefit to Third Parties . . . . .	53
13.4	Port's Warranties . . . . .	53
13.5	Quiet Enjoyment . . . . .	54
13.6	Notices . . . . .	54
13.7	Time of the Essence . . . . .	55
13.8	Nonwaiver . . . . .	55
13.9	Survival . . . . .	56
13.10	Severability . . . . .	56
13.11	Ordinance Priority . . . . .	56
13.12	No Light or Air Easement. . . . .	56
13.13	Lease Subject to Bonds and Ordinances . . . . .	56
13.14	Lease and Public Contract Laws . . . . .	57
13.15	Limitation on Port Liability . . . . .	57
13.16	Limitation on Lessee Liability . . . . .	57
13.17	Calculation of Time . . . . .	57
13.18	Headings . . . . .	57
13.19	Exhibits Incorporated by Reference . . . . .	57
13.20	Modification . . . . .	58
13.21	Non-binding Mediation and Binding Arbitration . . . . .	58
13.22	Attorney Fees . . . . .	58
13.23	Absence of Brokers . . . . .	58
13.24	Entire Agreement . . . . .	59
13.25	Successors . . . . .	59
13.26	Joint and Several Obligations . . . . .	59
13.27	Execution of Multiple Counterparts . . . . .	59
13.28	Defined Terms . . . . .	59

13.29 Interpretation . . . . .	59
13.30 No Limit on Port's Powers . . . . .	60
13.31 Warranty of Authority . . . . .	60
13.32 Memorandum of Lease . . . . .	60

# DEFINED TERMS

	<u>Page</u>
Access Corridor . . . . .	3
Allied and Derivative Products . . . . .	2
Additional Products . . . . .	2
Additional Rent . . . . .	7
Adjusted Basic Rent . . . . .	8
Adjustment Dates . . . . .	8
Approval of Bond Counsel . . . . .	35
Approved Product(s) . . . . .	2
Basic Rent . . . . .	7
Bond Financed Improvements . . . . .	1
Bonds . . . . .	1
Bulk Cargo Facility . . . . .	2
Canpotex . . . . .	1
Code . . . . .	5
Columbia River Datum . . . . .	20
Common Area Assessment . . . . .	10
Common Area Road . . . . .	54
Common Areas . . . . .	4
Construction Contract . . . . .	7
Costs . . . . .	29
CPI-U . . . . .	8
Damages . . . . .	45
Date of Taking . . . . .	50
Default . . . . .	40
Defined Terms . . . . .	59
Deposit . . . . .	11
Development Standards . . . . .	4
Documents . . . . .	29
Effective Date . . . . .	1
Environmental Costs . . . . .	24
Environmental Investigation . . . . .	26
Environmental Laws . . . . .	23
Event of Default . . . . .	40
Exit Audit . . . . .	39
Expiration Date . . . . .	4
Facilities Award . . . . .	51
Facilities Lease . . . . .	1
Facility . . . . .	2
Fair Market Value . . . . .	5
Guarantee . . . . .	2
Guarantors . . . . .	2
Hall-Buck . . . . .	2
Hazardous Substances . . . . .	24
Improvements . . . . .	1
Initial Audit . . . . .	19
Land . . . . .	1
Lease Year . . . . .	7

Lease Term . . . . .	4
Legal Holiday . . . . .	57
Lessee . . . . .	1
Lessee Improvements . . . . .	1
Lessee's Proportionate Share . . . . .	10
Licensed Area . . . . .	3
Minimum Basic Rent . . . . .	7
MSDS . . . . .	27
MT . . . . .	7
Ordinance . . . . .	1
Other Agreements . . . . .	41
Outstanding . . . . .	46
Partial Taking . . . . .	50
Periodic Audits . . . . .	25
Personal Property . . . . .	37
Port . . . . .	1
Port Expansion Area . . . . .	22
Port Improvements . . . . .	1
Port Owned Road . . . . .	54
Port Rules . . . . .	4
Portland Bulk Terminals, L.L.C. Project . . . . .	1
Property . . . . .	1
Renewal Option . . . . .	5
Rent . . . . .	7
Rent Commencement Date . . . . .	7
Restore; Restoration . . . . .	34
Rivergate . . . . .	10
Start-Up Basic Rent . . . . .	8
State . . . . .	1
Substantial Completion . . . . .	7
Taking Award . . . . .	51
Taking Entity . . . . .	50
Tax Due Date . . . . .	12
Title Report . . . . .	54
Total Taking . . . . .	50
Trustee . . . . .	32
Work . . . . .	14

EXHIBITS

	<u>Page</u>
Exhibit "A" - Lease Site . . . . .	1
Exhibit "B" - Facilities Lease . . . . .	2
Exhibit "C" - Guarantee Agreement . . . . .	2
Exhibit "D" - Rivergate Development Standards . . . . .	4
Exhibit "E" - Construction Contract . . . . .	7
Exhibit "F" - Initial Audit . . . . .	19
Exhibit "G" - Remediation Requirements and Procedures . . . . .	19
Exhibit "H" - Section 6 Adjacent Properties . . . . .	26
Exhibit "I" - Hazardous Substances . . . . .	26

**GROUND LEASE FOR  
BULK CARGO FACILITY/TERMINAL 5**

**PORT OF PORTLAND/PORTLAND BULK TERMINALS, L.L.C.**

THIS LEASE is made and entered into on the 14<sup>th</sup> day of March, 1996, ("Effective Date") between THE PORT OF PORTLAND (the "Port"), a port district of the State of Oregon (the "State"), and PORTLAND BULK TERMINALS, L.L.C., an Oregon limited liability company ("Lessee"), organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation which exports Potash from Canada to destinations outside of Canada and the United States ("Canpotex"), to facilitate the export of Potash and for other related purposes.

The parties, intending to be legally bound by the terms of this Lease, agree as follows:

**SECTION 1            AGREEMENT TO LEASE PROPERTY**

1.1 Agreement to Lease and Description of Property. The Port agrees to lease to Lessee, and Lessee agrees to lease from the Port approximately sixty-five (65) acres of Port owned land located at Terminal 5 in the Port's Rivergate Industrial Park, more particularly described and shown on Exhibit "A", attached hereto (the "Land"), together with all Improvements located thereon (collectively referred to as the "Property"). As used in this Lease, the term "Improvements" shall mean all roadways, driveways, sidewalks, infrastructure improvements, utilities, paved or parking areas, landscaping, buildings, equipment, rotary rail dumper pit, and any other enhancements located on and made to the Land and/or the Licensed Area (described in Section 1.3.2) by the Port or Lessee, whether now in existence or made in the future. The term "Improvements" excludes all "Bond Financed Improvements" (as defined in Section 1.1.1. below) but includes all improvements paid for by the Port without use of Bond funds ("Port Improvements") and all improvements made and paid for by Lessee not constituting Bond Financed Improvements or replacements for Bond Financed Improvements ("Lessee Improvements").

1.1.1 Bond Financed Improvements and Facilities Lease. "Bond Financed Improvements" are those constructed by the Port using funds from Special Obligation Revenue Bonds, Series 1996 ("Portland Bulk Terminals, L.L.C. Project"), (the "Bonds"), issued by the Port pursuant to Bond Ordinance 379-B, as amended and supplemented by Ordinance 384-B (collectively the "Ordinance") and are covered by a separate Facilities Lease ("Facilities Lease") to be entered into between the parties hereto, which shall be read in conjunction with this Lease and, together with this Lease, shall

JACOB\B\BLKGLA.WP  
February 23, 1996

govern Lessee's use of the Property and the Licensed Area described in Section 1.3.2. The Facilities Lease is attached hereto as Exhibit "B". If any of the terms or provisions of this Lease are found to be in direct and irreconcilable conflict with the terms and provisions of the Facilities Lease, then the Facilities Lease shall control. Provided, however, that if the requirements of this Lease exceed the requirements of the Facilities Lease and/or impose additional requirements not included in the Facilities Lease but not prohibited by it, those provisions of this Lease shall not be deemed to conflict with the Facilities Lease within the meaning of this Section nor within the meaning of Section 1.2 of the Facilities Lease. Notwithstanding any of the foregoing, however, if the Facilities Lease is satisfied and/or terminated prior to termination of this Lease, all Bond Financed Improvements shall, to the extent they are not already covered by the Lease, automatically be governed by this Lease without the requirement of any further action.

1.2 Lease Guarantee. Performance by Lessee of all terms, conditions and obligations under this Lease is fully, unconditionally and jointly and severally guaranteed by Canpotex and Hall-Buck Marine, Inc. ("Hall-Buck"), (collectively, the "Guarantors"). Guarantee agreements are attached hereto as Exhibit "C" (collectively referred to as the "Guarantee").

### 1.3 Use of Property.

1.3.1 Permitted Use. Lessee shall use the Property and the Licensed Area only for a multi-product bulk cargo terminal handling and storage facility for the import and export of bulk products (the "Bulk Cargo Facility," also referred to sometimes herein as the "Facility"). Bulk products to be handled at the Facility will be reviewed and approved by the Port prior to handling and storage at the Facility. The Port has approved the handling of potash and Allied or Derivative Products at the Facility ("Approved Products"). Potash is also approved for covered storage at the Facility. As used herein, "Allied or Derivative Products" are defined as all nitrogen, phosphorus, potassium and sulphur fertilizer products in their various dry bulk forms. Bentonite clay, coal, soda ash, green petroleum coke, sulphur (for storage) and grains are referred to herein as "Additional Products" that are intended to be added to the list of Approved Products after the Port has reviewed and approved Lessee's proposal to handle and store such Additional Products, which review and approval shall not be unreasonably withheld or delayed. In conducting any such review for the handling and/or storage of these Additional Products, the Port shall consider only whether the designs, specifications and methods for handling and storage comply with all applicable Federal, State and local requirements and with the best environmental management practices then appropriate for

JACOB\B\BLKGLA.WP  
February 23, 1996

the handling and storage of such bulk products. If Lessee wishes to handle or store any other bulk products which are not specifically described in this Section, then the Port may impose any other criteria it deems appropriate in determining whether to allow such products and the decision as to whether to deny or allow such other products shall be within the sole discretion of the Port. The Port agrees that it will not unreasonably delay responding to any such request for such other products by Lessee. No underground or above-ground fuel tanks shall be allowed on the Property. Except as provided in this Lease, no other use may be made of the Property.

1.3.2 License for Preferential Use of Berth 503. In conjunction with its use of the Property, Lessee is also hereby given a license for preferential use of the dock, wharf and apron located at Berth 503 which is owned by the Port. Lessee shall use its best efforts to provide the Port with secondary use of the dock, wharf and apron located at Berth 503 when such use will not interfere with Lessee's operations, as determined in Lessee's discretion. The dock, wharf and apron, located at Berth 503, are collectively referred to herein as the "Licensed Area" which is specifically identified on Exhibit "A." If the Port wishes to exercise this secondary use of the Licensed Area, the Port shall make a written request to Lessee, addressed to Lessee's operations manager. Lessee shall keep the Port advised of the name of its then current Operations Manager. The Port's request may be sent by facsimile and Lessee may reply by facsimile, to the numbers set forth in Section 13.6. Lessee agrees that it will not unreasonably delay responding to such request by the Port.

1.3.3 Port's Secondary Berthing Rights. Subject to Section 1.3.2, including the notice requirements thereof, the Port reserves the right to use the Licensed Area and to allow other parties to use the Licensed Area whenever it is not being used by Lessee. Lessee agrees to keep the Licensed Area reasonably clear when not in use in order to allow the Port to exercise its secondary berthing rights, as provided herein. The Port, and other parties using the Licensed Area with Port permission, shall have the right of ingress and egress through a portion of the Property when utilizing the berthing rights, provided that such ingress and egress does not unreasonably interfere with Lessee's operations. This area for ingress and egress is limited to the area shown on Exhibit "A" and is referred to as the "Access Corridor."

1.3.4 Terminal Tariff and Dockage Charges. The Port retains the exclusive right to charge and collect dockage fees on all vessels berthing at Berth 503, pursuant to Port terminal tariff rates.

JACOB\BPBLKOLA.WP  
February 23, 1996

1.3.5 Compliance with All Laws. Lessee agrees that it will at all times comply with all laws, ordinances, rules and regulations of the State, the United States, Canada (if applicable to this Bulk Cargo Facility), city, county or other public government authorities, including, but not limited to, local fire codes, zoning and occupancy codes, Port ordinances, the current Development Standards for Rivergate Industrial Park ("Development Standards") and any published Port Rules and Regulations (collectively "Port Rules") which are applicable to this Lease and Lessee's use of the Property, the Bond Financed Improvements and Licensed Area. Lessee shall promptly provide the Port with copies of all communications from any such government entity which relates to Lessee's noncompliance or alleged noncompliance with any law or other government requirement applicable to Lessee's operations on the Property and the Licensed Area. Lessee acknowledges receipt of the current Rivergate Development Standards, attached as Exhibit "D." Nothing herein stated shall prevent Lessee from reasonably contesting or objecting to, as provided by law, the application of these laws, rules or regulations to Lessee. If a violation of the law, confirmed by conviction, that constitutes a felony was committed with the knowledge of any manager or superintendent of Lessee's operations, then Lessee must restrict the party who committed the felony and the manager or superintendent who knew about this violation before the occurrence of such violation from working on the Property or the Licensed Area for the duration of this Lease.

1.3.6 Appurtenant Rights. Lessee shall have a nonexclusive right to use the Rivergate Common Areas in common with the Port and with other parties to whom the Port has granted or may grant such right. The term "Common Areas" means existing parking areas, roadways, sidewalks, driveways, surrounding landscaping and grounds, and any other areas now or hereafter designated as Common Areas by the Port within the Rivergate Industrial Park, to be used in common with other Rivergate tenants and others authorized to use these areas by the Port. Lessee will be assessed an annual Common Area maintenance fee for which Lessee will be billed on an annual basis. This fee is described in more detail in Section 3.6 below.

## SECTION 2      TERM

2.1 Lease Term. The term of this Lease ("Lease Term") shall commence on the Effective Date shown at the beginning of this Lease and continue through June 30, 2027 (the "Expiration Date"), unless sooner terminated pursuant to the terms of this Lease.

2.2 Lease Renewal Option. Provided that no Event of Default (as defined in Section 10) by Lessee hereunder has occurred and is continuing, Lessee shall have an automatic right to renew this Lease on the same terms and conditions contained in this Lease for

JACOBBA/PBLKGLA.WP  
February 23, 1996

one (1) six (6) year renewal period ("Renewal Option"). If Lessee wishes to exercise this Renewal Option, Lessee must notify the Port at least ninety (90) days prior to the Expiration Date of this Lease. If such renewal notice is given by Lessee, this Lease shall automatically continue through the six (6) year renewal period, with the Expiration Date of this Lease then automatically becoming June 30, 2033.

2.3 Option to Purchase Improvements at End of Lease. After the Expiration Date of this Lease (Expiration Date being either June 30, 2027 or June 30, 2033 if the Renewal Option is exercised), provided that no Event of Default by Lessee hereunder has occurred and is continuing and provided that all Bonds have been paid or defeased pursuant to Article XVI of the Ordinance and all costs and fees associated with the Ordinance and Facilities Lease have been paid in full, then Lessee shall be entitled to purchase all Bond Financed Improvements from the Port at "Fair Market Value" (defined in Section 2.3.1) and all Lessee Improvements for ONE DOLLAR (\$1.00). This right to purchase all of the above, however, is subject to all of the following: (a) Lessee and the Port negotiating a mutually agreeable ground lease; (b) Lessee purchasing all Bond Financed Improvements and all Lessee Improvements as one integral unit; (c) such a sale not being prohibited under the then current Internal Revenue Code of 1986, as amended or as it may later be renamed or redesignated (the "Code"); (d) Lessee taking responsibility for any tax consequences that might result from such a sale relating to the Bond financing or otherwise; (e) the ability of the Port and Lessee to reach a determination of Fair Market Value which meets the requirements of the Code; and (f) any applicable provisions of State law governing the sale of Port property.

2.3.1 Fair Market Value. As used in Section 2.3, "Fair Market Value" shall mean the value assigned to all Lessee Improvements and Bond Financed Improvements, sold as one integral unit and as a going concern operation, with the Fair Market Value then being adjusted accordingly to allow for the ONE DOLLAR (\$1.00) price for the Lessee Improvements in lieu of the Fair Market Value price. If the parties cannot agree on a Fair Market Value or if the Code requires a formal determination of Fair Market Value using this or another formula, then the parties shall jointly select an Oregon MAI licensed and bonded commercial appraiser, with special expertise in assessing the value of industrial equipment used in industrial operations of the type involved hereunder. If the parties cannot agree on an appraiser, then any Multnomah County Circuit Court judge may be asked by either party to appoint one. If such a proceeding is necessary, the parties shall be free to submit briefs and/or argument to the judge in favor of or in opposition to any particular appraiser but the decision of the judge is hereby agreed to be final and binding and not appealable.

JACOB\B\BLKOLA.WP  
February 23, 1996

The provisions for selecting an appraiser outlined in this Section 2.3.1 may be modified as needed to meet the requirements of the Code or as agreed upon between the parties.

2.4 Option for New Lease. After the Expiration Date of this Lease, Lessee shall have the option to enter into a new ground lease with the Port for the Land and Port Improvements and a license for the Licensed Area and to purchase all of the Lessee Improvements and Bond Financed Improvements located on the Land and in the Licensed Area, as set forth in Section 2.3. Such lease shall be for an initial five (5) year term with two (2) five (5) year renewal option periods. The new lease would allow the continued use of the Property and the Licensed Area as a Bulk Cargo Facility. All other terms of the new lease, including the rental rate, shall be negotiated in good faith at the time and shall be based on the Port's then current leasing policies and practices. Notwithstanding the foregoing, however, it is agreed that included as part of the Port's leasing policies and practices shall be the Port's right to decline to enter into the above-described new lease if the Port reasonably determines that Lessee has been or is likely to become an undesirable tenant for the Port.

2.5 Exercise of Option for New Lease. Lessee must exercise its option to enter into the new lease described in Section 2.4 and designate that it wishes to purchase the Lessee Improvements and Bond Financed Improvements by giving written notice thereof to the Port not more than three hundred sixty-five (365) days and not less than one hundred and eighty days (180) days prior to the Expiration Date of this Lease.

2.6 Early Termination Option. Lessee shall have the option to make an election to terminate this Lease at any time after the eighteenth year of this Lease but only if Lessee first does all of the following:

1. Lessee must give the Port at least two (2) years advance written notice, which notice may be given at any time on or after the eighteenth anniversary of the Rent Commencement Date of this Lease, that it intends to terminate this Lease. Said notice must state the exact date Lessee intends for this Lease to terminate; and

2. All Bonds must be fully defeased prior to such early termination; and

3. The Property must be restored in full compliance with Section 9 of this Lease prior to such early termination; and

4. No outstanding Event of Default nor any violation of this Lease that, but for the passage of the time periods set forth in

JACOBBLPBLKGLA.WP  
February 23, 1996

Section 10, would otherwise constitute an Event of Default may exist at the time this early termination right is exercised and at the time of early termination; and

5. Lessee must pay the Port a buy-out fee based on the following formula upon early termination: The Minimum Basic Rent amount in effect during the last full year of this Lease multiplied by the number of years that would otherwise be remaining of the Lease Term, but for this early termination.

### SECTION 3      RENT

3.1 Rental Commencement. Lessee shall pay to the Port annual rent, payable in monthly installments, for each Lease Year for use of the Property and Licensed Area, referred to as the "Basic Rent." Basic Rent shall be due and payable commencing on July 2, 1997, or the first day of the month immediately following Substantial Completion of the first phase of construction for direct rail-to-vessel operations, as that first phase is more fully described in the Construction Contract for the Bulk Cargo Facility between the Port, Lessee and Hall-Buck ("Construction Contract"), whichever shall occur first ("Rent Commencement Date"). The Rent Commencement Date may be delayed pursuant to the provisions found in Section 2.6, 11.2 or 11.3 of the Construction Contract, which is attached hereto as Exhibit "E". The "Lease Year" shall run from July 1 through June 30, except for the first Lease Year, which period may actually be shorter than one (1) year. Basic Rent due for any partial Lease Year shall be prorated. All other sums which become payable by Lessee to the Port under the terms of this Lease shall be considered "Additional Rent" due under this Lease. "Rent," as used herein, shall mean all such Additional Rent, together with Basic Rent.

3.2 Basic Rent Amount. Basic Rent due hereunder shall be as follows:

Basic Rent charged to Lessee shall be based on the volume of Approved Products processed through the Property or the Licensed Area. In no case, however, regardless of volume, shall Basic Rent ever be less than the annual minimum amount set forth immediately below ("Minimum Basic Rent") per year. Basic Rent, based on volume and measured in terms of metric tons (2,204.6 lbs.= "MT") of Approved Product processed through the Bulk Cargo Facility, shall be charged as follows:

First 1,535,000 MT or less = \$0.43/MT but in no event ever less than SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000) per year ("Minimum Basic Rent").

JACOB\BPBLKGLA.WP  
February 23, 1996

Thereafter, for all amounts over 1,535,000 MT, an additional amount shall be added to Minimum Basic Rent as follows:

1,535,000 to 2,000,000 MT = \$0.55/MT

Over 2,000,000 MT = \$0.35/MT

All of the above Rent amounts shall be adjusted on an annual basis based on any change in the "CPI-U", as set forth below.

**3.3 Reduced Rent Period.** Basic Rent will begin to accrue on the Rent Commencement Date. For a start-up period not to exceed six (6) months immediately following the Rent Commencement Date, the Port will accept the following as "Start-up Basic Rent": \$0.43/MT and there will be no guaranteed Minimum Basic Rent applicable during this period. The Minimum Basic Rent shall go into effect on the date the Bulk Cargo Facility is completed to the point where Lessee can handle and store potash, or the expiration of the above-described six (6) month period, whichever shall occur first. This six (6) month Start-up Basic Rent period, which begins on the Rent Commencement Date, shall be extended if permitting delays or force majeure events occur during this period, as set forth in Section 2.6, 11.2 or 11.3 of the Construction Contract, which delay completion of the Bulk Cargo Facility.

**3.4 Adjustment to the Basic Rent.** Basic Rent, (including the Minimum Basic Rent amount) shall be adjusted on July 1, 1998 and on July 1 each year thereafter (the "Adjustment Dates") based on changes in the "CPI-U", as defined in Section 3.4.1 below. The "Adjusted Basic Rent" shall be effective as of the Adjustment Date. Lessee acknowledges that adjustments to Basic Rent, based on changes in the CPI-U, although effective as of the Adjustment Date, may not be able to be calculated until some time after the Adjustment Date. Lessee agrees to continue paying Basic Rent at the Basic Rent rate in effect prior to the Adjustment Date until receipt of a billing from the Port advising Lessee of the new Adjusted Basic Rent rates and new Adjusted Basic Rent amounts. Lessee further agrees to pay to the Port, within thirty (30) days after receipt of an invoice therefor, any difference between the amount of Basic Rent actually paid to the Port after the Adjustment Date and the amount actually due for such period.

**3.4.1 Formula.** The annual adjustment of the Basic Rent and Minimum Basic Rent shall be based on the percentage change of the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for All Urban Consumers (1982-84=100)," published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U"), for the calendar year ending on the December 31 immediately preceding the applicable Adjustment Date. Notwithstanding this provision or Section 3.4.2., the Basic Rent

JACOB\B\BLKGLA.WP  
February 23, 1996

shall never be adjusted below the applicable initial Basic Rent set forth in Section 3.2.

3.4.2 CPI-U Cap for Calculation of Basic Rent. As stated above, an annual adjustment will be made to Basic Rent based upon any change in the CPI-U. If, however, the CPI-U increases by more than 3.6% in any one year, any increase over 3.6% will be discounted as follows:

a. CPI-U increase of 0 to 3.6% in any given year will cause the Basic Rent to escalate by 100% of the CPI-U increase for that year;

b. CPI-U increase of between 3.6% to 7.0% in any given year will cause the Basic Rent to escalate by 3.6% plus 41.2% of the CPI-U increase over and above 3.6% for that year;

c. CPI-U increase of more than 7% in any given one year period shall cause the Basic Rent to escalate by 5% for that year.

If the CPI-U decreases by more than 3.6% in any one year during the Lease Term, the same discounts that apply to increases will apply to decreases.

3.4.3 Change in Index. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84=100)" published by the Bureau of Labor Statistics or in the monthly Labor Review of the United States Department of Labor shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority to be mutually agreed upon by the Port and Lessee shall be used for making the computation. If the parties cannot agree, an index will be selected through binding arbitration, as provided in Section 13.21.

3.5 Time and Place of Rent Payments. Lessee shall make monthly payments of all Basic Rent on or before the fifteenth day of each and every month, commencing with the second full month after the Rent Commencement Date, without offset, abatement or deduction. Monthly payments shall be based on the volume of bulk cargo products that are processed through the Bulk Cargo Facility by truck, rail and/or vessel during the previous month, as calculated pursuant to Section 3.2. In the event bulk cargo products are processed through the Bulk Cargo Facility without loading to or discharging from a vessel, such payments shall be based on the date such products are shipped from the Bulk Cargo Facility by truck or rail. Lessee shall submit to the Port, along

JACOBBI\PBLKOLA.WP  
February 23, 1996

with the monthly payment, a detailed breakdown of the volume of bulk cargo products that were loaded, discharged or shipped during the previous month and the cumulative Lease Year-to-date volume, broken down by each product. All payments shall be delivered to the Port at the following address or such other place as the Port may later designate by written notice, as provided in Section 13.6:

The Port of Portland  
P.O. Box 5095  
Portland, Oregon 97208-5095

If, by the last month of the Lease Year, Lessee has not made payments which equal or exceed the Minimum Basic Rent, then the last payment shall be for the monthly amount due pursuant to the formula set forth in Section 3.2 (or Section 3.3 when applicable) or an amount sufficient, together with the previous payments for the Lease Year, to equal the then applicable Minimum Basic Rent due, whichever is greater. Pursuant to Section 3.3, however, this calculation shall not apply to the Start-up Basic Rent period set forth in Section 3.3 and the amount of Minimum Basic Rent due for any given Lease Year that includes this Start-up Basic Rent period will be calculated to take into account the Start-up Basic Rent period set forth in Section 3.3 and may therefore result in a proportionately reduced annual Minimum Basic Rent amount for the Lease Year(s) that includes the Start-up Basic Rent period.

3.6 Common Area Assessment. The Property is located in an area known as the Rivergate Industrial District ("Rivergate"). The Common Area fee ("Common Area Assessment"), described in Section 1.3.6 above, is paid by all Rivergate tenants on an annual basis. The Common Area Assessment is considered Additional Rent and shall be based on Lessee's Proportionate Share of operating, repairing, servicing, maintaining and improving the Common Areas of Rivergate. Common Area Assessments may include all Common Area water charges; connection, maintenance, and other fees relating to connection and use of drainage and sewage systems; litter control; electricity for street lights and maintenance of street lights; fire protection; signage; landscaping; cleaning and maintenance supplies and services; repair and replacement of Common Area facilities; equipment and tools; administration costs and management fees; superintendent fees; security services; insurance premiums. "Lessee's Proportionate Share" shall mean the square footage of the Property divided by the total leasable square footage of Rivergate, whether or not occupied. The Common Area Assessment shall be calculated in accordance with the Port's standard real estate accounting practices and generally accepted accounting principles. The Common Area Assessment may also include any costs attributable to support services provided by the Port to administer the Port's obligations relating to the Common Areas, and costs incurred by the Port in connection with the accounting of the Common Area

JACOBV/PBLKGLA.WP  
February 23, 1996

Assessment. Lessee shall receive an annual billing for its share of the Common Area Assessment. The due date for Common Area Assessments is thirty (30) days from receipt of the billing for the Common Area Assessment. For the year 1993/1994, the Common Area Assessment was approximately TWO HUNDRED THIRTEEN DOLLARS (\$213) per acre. This figure is given only as a reference point and should not be considered representative of what the Common Area Assessment will be in future years. However, it is agreed that Lessee's Common Area Assessment shall not increase by more than twenty-five percent (25%), in the aggregate, for the first five (5) years of this Lease, even if the CPI-U increases by more than twenty-five percent (25%), in the aggregate, during the first five (5) years of this Lease. Thereafter, annual escalations shall not exceed one hundred percent (100%) of the annual increase in the CPI-U. CPI-U will be calculated using the formula set forth in Section 3.4.1 above. Lessee's Common Area Assessment for the first Lease Year of this Lease shall be prorated based on the Rent Commencement Date of this Lease.

3.7 Security Deposit. Upon execution of this Lease, Lessee shall deposit with the Port an irrevocable standby letter of credit drawn on a bank acceptable to the Port, in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) (the "Deposit") which shall renew every three (3) years. The Deposit shall not be considered an advance payment of Rent or a measure of the Port's damages in the Event of a Default (defined in Section 10) by Lessee. The Deposit shall only be used to cover the costs associated with Environmental Law violations and Hazardous Substance contamination clean-up (defined in Section 6). In the event Lessee fails to fully remedy a violation of Environmental Laws or Hazardous Substance contamination for which Lessee is responsible under this Lease within the time period set forth in Section 10.1.2, the Port shall be entitled to immediately draw upon the letter of credit, without further authorization from Lessee, to the extent the Port deems necessary. The Port may, but shall not be obligated to, use the Deposit to cover costs or other sums owed by Lessee to the Port or to reimburse the Port for any other amounts which the Port may expend or incur by reason of Lessee's failure to perform any environmental obligations under this Lease. If the Port does apply any of the Deposit to any of the above, Lessee shall, immediately upon demand, replenish the Deposit to its original full amount. If Lessee fully performs all of its environmental obligations under this Lease, the letter of credit shall be released within thirty (30) days after the Expiration Date or earlier termination of this Lease and delivery of the Property to the Port, as required under this Lease. If the Port reasonably believes that any question exists concerning Lessee's full compliance with the environmental provisions of this Lease, the Port shall be entitled to retain the Deposit until the Port is satisfied that there is no remaining Hazardous Substance contamination for which Lessee is responsible

JACOB\B\BLKGLA.WP  
February 23, 1996

under this Lease and no outstanding violation of Environmental Laws for which Lessee is responsible under this Lease, even if it takes the Port longer than thirty (30) days after the Expiration Date or earlier termination of the Lease and return of the Property to make such a determination to the Port's satisfaction. If Lessee disputes the Port's use of the Deposit, it may request binding arbitration, as set forth in Section 13.21 below. Such demand for arbitration, however, shall not stay any action or use of the Deposit by the Port. The amount of the Deposit shall be adjusted every three (3) years based on one hundred percent (100%) of the change in the CPI-U formula referenced in Section 3.4.1. If the Port draws on the Deposit to fully cure a Default and Lessee promptly replenishes the Deposit to its full amount, the Port shall not be entitled to terminate this Lease based on any Default which has been fully cured by use of the Deposit.

3.8 Taxes. Lessee shall pay all taxes, real or personal, and all assessments of any public authority levied against the Property or upon any taxable interest of Lessee in the Property or the Licensed Area acquired pursuant to this Lease or any taxable possessory right Lessee may have in or to the Property, the Bond Financed Improvements, the Licensed Area or the Improvements located thereon, as well as all taxes on all taxable property, real or personal, related to the Bulk Cargo Facility and owned by Lessee, including any other tax or charge levied wholly or partly in lieu thereof. Lessee shall make all such tax payments on or before the Tax Due Date. The "Tax Due Date" shall mean the payment due date stated on the tax bill. Lessee shall also be allowed to contest the validity of any assessment on the Property so long as the taxes are paid on or before their Tax Due Date. Lessee understands that Multnomah County, Oregon, is an intended third party beneficiary of Lessee's obligation under this Lease to pay taxes owed to Multnomah County, and that Multnomah County may enforce such obligation directly, by an action for a money judgment, without affecting any right or remedy available under this Lease or otherwise. Lessee understands and agrees that, should this Lease expire prior to the end of any given tax year, Lessee will nonetheless be responsible to pay taxes assessed for the entire tax year (currently, July 1 through June 30). Although Lessee is generally responsible for any and all taxes relating to the Property and Bond Financed Improvements, it is agreed that Lessee shall not be responsible for any taxes that are solely attributable to the Port or the Port's income and have nothing to do with the Property or Lessee's operations on the Property or in the Licensed Area.

3.8.1 Payment In Lieu of Taxes. It shall be up to Lessee to determine whether Lessee is eligible for special payment "In Lieu of Tax" treatment and to take all steps necessary to apply for the payment In Lieu of Tax. In Lieu of Taxes are currently

JACOBWPBLKGLA.WP  
February 23, 1996

governed by ORS 307.120. In order to qualify for In Lieu of Taxes, Lessee must follow procedures set forth in ORS 307.120 which now require that on or before June 30 preceding any year for which In Lieu of Taxes is requested, a request for approval and computation of the In Lieu of Taxes must be filed with the County Assessor in accordance with ORS 307.120. The Port is required to notify any party-in-interest in property qualified for In Lieu of Taxes not later than fifteen (15) days prior to the date request is required to be made (now June 30) of the following: (a) the obligation to file a request for appraisal and computation of In Lieu of Taxes no later than June 30 or within thirty (30) days after the interest in the property is granted, whichever is later; (b) the obligation to pay the In Lieu of Tax in the amount of one-quarter of one percent of real market value of the exempt property held to the County Treasurer on or before the September 1 following the date of request; and (c) if the request is not made within the time prescribed, or if the taxes are not paid, then the property should be assessed and taxed in the same manner as non-exempt properties similarly situated. Except for this disclosure, the Port shall have no responsibility to advise Lessee concerning In Lieu of Tax payments, due dates or the application process therefor. The Port does agree that it will send Lessee, by fax or regular mail, notice of tax liability or In Lieu of Tax liability if it receives such notice from the County.

3.9 Delinquency and Administrative Charges. All Rent not paid by Lessee within ten (10) days of the date such payment is due shall bear a delinquency charge for the delinquent amount of one and one-half percent (1 1/2%) per month or, if less, the then maximum rate of interest allowed by law, from the date of delinquency until paid. Imposition of this charge shall not constitute a waiver of any other remedies available for failure to timely pay Rent. The Port's failure to impose a delinquency charge shall not be a waiver of the Port's other rights and remedies for such delinquent payment, nor of the Port's right to later impose a delinquency charge for future delinquent payments. Acceptance of any delinquency charge by the Port shall in no event constitute a waiver of Lessee's Default, if any, with respect to the overdue amount in question, nor prevent the Port from exercising any of the other rights and remedies granted under this Lease or by law.

3.10 Acceptance of Rent. The Port's acceptance of a late or partial payment of Rent shall not constitute a waiver of any Event of Default. It is hereby agreed that any endorsements or statements appearing on checks of waiver, compromise, payment in full or another similar restrictive endorsement shall have no legal effect. Lessee shall remain obligated to pay all Rent due, even if the Port has accepted a partial or late payment of Rent. Notwithstanding the foregoing, if no other Event of Default exists and Lessee pays all Rent to the Port in full, plus all

JACOBWPBLKOLA.WP  
February 23, 1996

delinquencies, and Lessee has not been late more than twice in its monthly payments during that same Lease Year, then acceptance of such payment, in full, by the Port, shall be deemed to have cured that Default.

#### SECTION 4            LESSEE'S OTHER OBLIGATIONS

4.1 Construction of Lessee Improvements. The provisions of Sections 4.1.1, 4.1.2, 4.1.3 and 4.1.4 below shall not apply to any construction covered by the Construction Contract. These provisions shall also not apply to other construction projects undertaken by Lessee that are not financed by Bond proceeds and cost less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) to fully complete and the construction of which will not pose a significant risk of environmental harm that will require special handling and/or spill contingency plans to be put in place. Lessee must still, however, give the Port written notice of any construction projects of FIFTY THOUSAND DOLLARS (\$50,000) or more that are not covered by the Construction Contract. This notice shall consist of a written summary of the construction project and a listing of all new equipment included in that project.

4.1.1 Port Approval. Except for those construction projects described in Section 4.1, Lessee shall undertake no construction, alteration, or changes ("Work") on or to the Property and/or the Licensed Area without the prior written consent of the Port, which consent shall not be unreasonably withheld. If Lessee should desire to do any additional construction on the Property and/or in the Licensed Area, it must first submit the following to the Port for approval, which approval shall not be unreasonably withheld: The name of the proposed contractor; final plans and specifications; a site-use plan; and architectural renderings. Lessee must also submit, for similar Port approval, its environmental controls for any planned Work aimed at preventing accidental spills of Hazardous Substances or contamination of the Property and/or Licensed Area and surrounding waterways. Approval of all of the above must be obtained prior to application for any building or similar permit. The Port shall have thirty (30) days to review and approve or deny any such submissions. The Port may condition its approval on Lessee's obtaining and delivering to the Port a performance bond and a labor and materials payment bond issued by a corporate surety, with an A.M. Best rating of "A" or better or equivalent, and licensed to do business in Oregon, each in an amount equal to the estimated cost of the construction and each in a form reasonably satisfactory to the Port. Subject to the provisions and exemptions found in Section 9 below, all Improvements made to the Property and/or the Licensed Area by Lessee, pursuant to this Section 4 of this Lease, shall be treated as Lessee's property during the term of this Lease but upon the expiration or earlier termination of this Lease, may, at the Port's

JACOB\B\BLKGLA.WP  
February 23, 1996

option and in the sole discretion of the Port, be deemed a part of the Property and the Licensed Area and owned by the Port immediately upon the Expiration Date or earlier termination of this Lease.

4.1.2 Permits. Once preliminary approval has been given by the Port, no Work may commence until Lessee obtains and delivers to the Port copies of all necessary governmental permits. Lessee must also supply the Port with a copy of Lessee's occupancy permit.

4.1.3 Construction Schedule. A reasonable completion schedule shall be agreed upon for any Work project prior to the commencement of such Work. The completion schedule agreed upon shall be subject to the Force Majeure provisions of Section 4.3. All Work done on the Property and/or the Licensed Area at any time during this Lease must be done in a good workman-like manner and in accordance with all building permit requirements. All Work shall be done with reasonable dispatch. If requested by the Port, within thirty (30) days after the completion of any Work, Lessee shall deliver to the Port complete and fully detailed as-built drawings of the completed Work, prepared by an architect pre-approved by the Port and duly licensed by the State of Oregon.

4.1.4 Failure to Complete Construction. If Lessee fails to complete any Work within the agreed upon time frame, Lessee must either remove all Work and restore the Property and/or Licensed Area to the condition that existed prior to commencement of such Work or Lessee may ask for an extension of time to complete the Work. The granting of such an extension to complete the Work shall not be unreasonably withheld or delayed by the Port. Lessee may also ask to abandon Work on any project but to leave any Work already done in place. Whether to grant or deny such a request shall be within the sole discretion of the Port. This Section is subject to the Force Majeure provisions of Section 4.3.

#### 4.2 Maintenance.

4.2.1 General. Lessee shall keep and maintain the Property, and all Bond Financed Improvements thereon, in good repair and in good and safe operating condition and shall perform all necessary and appropriate preventive maintenance and repairs. On the third anniversary of the Effective Date of this Lease, and every third anniversary thereafter, the Port and Lessee shall conduct a thorough inspection of the Property, the Bond Financed Improvements and Licensed Area, including the environmental audits outlined in Section 6.3 below, and the Port shall inform Lessee of any needed repairs or maintenance to be done in order to reasonably maintain the quality of the Property and all Bond Financed Improvements. Such repairs and maintenance shall be done with all reasonable dispatch. Notwithstanding the foregoing, the Port

JACOB/VBLKOLA.WP  
February 23, 1996

reserves its right to inspect the Property, the Bond Financed Improvements and Licensed Area more frequently, as set forth in Section 4.7 below. Lessee shall develop and adhere to a maintenance plan and maintenance schedule for all machinery, heating and cooling systems and fire prevention systems. A copy of this plan and schedule shall be given to Port engineering staff for review and approval prior to the Rent Commencement Date of this Lease.

4.2.2 Other Maintenance, Development and Landscaping Standards. Lessee shall maintain the Property and all Bond Financed Improvements in a clean and orderly state and, to the extent of Lessee's use of the Licensed Area, maintain the same in a clean and orderly state. Lessee shall also comply with any specific published or posted Port maintenance standards for the Property, including the Bond Financed Improvements and the Licensed Area, and all Development Standards, and shall meet all City of Portland and/or Multnomah County landscaping and greenspace requirements. All refuse shall be kept in covered containers and regularly removed by a refuse company to a legal garbage disposal site.

4.2.3 Conduct of Business. Except as herein provided and subject to the Force Majeure provisions of Section 4.3, Lessee agrees to continuously carry on Lessee's business at the Bulk Cargo Facility, without interruption, at all times after the Rent Commencement Date of this Lease. Lessee agrees to notify the Port of any shut-down or closure which is expected to last more than two (2) weeks and shall in no event cease operations for any period longer than ninety (90) days without first obtaining the written approval of the Port, which approval shall not be unreasonably withheld or delayed. In the case of an emergency where it is not possible to foresee that a shut-down or closure will last more than two (2) weeks or result in operations ceasing for more than ninety (90) days, Lessee shall inform the Port of such a situation as soon as is reasonably possible. In the case of any shut-down of a period of two (2) weeks or longer, Lessee agrees to maintain one or more persons on the Property at all times for security purposes.

4.3 Force Majeure. Lessee shall not be deemed in violation of Sections 4.1.3, 4.1.4, or 4.2.3 if Lessee's failure to perform thereunder or operate its business is delayed or prevented by extraordinary acts of nature, major fire, war, labor strikes, government restrictions or regulations, or other extraordinary casualties beyond Lessee's control which directly impede or restrict Lessee's ability to operate its business or to otherwise perform its obligations as required hereunder; provided, however, that if any such events do occur, Lessee shall inform the Port of such a situation as soon as is reasonably possible and, in good faith, use all reasonable efforts to remedy the cause or causes preventing it from performing its obligations under this Lease.

JACOBVBPBLKOLA.WP  
February 23, 1996

suspected violation of this Lease or of the law. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property or any other loss occasioned by such entry, except to the extent caused by the negligent or wilful misconduct of the Port or its employees or authorized agents when acting on behalf of the Port. The Port shall be given keys with which to unlock any gate into or within the Property. In an emergency, the Port shall have the right to use any and all means which the Port may deem reasonable in order to obtain entry into any building located on the Property. In addition to right of entry for inspection and emergency purposes, the Port and any of its tenants located on the adjoining property shall also have the right to full access and the right to use any roadways and a tunnel, if such tunnel is built, through a designated "Access Corridor", as shown on Exhibit "A" to access other Port-owned property inside the railroad loop and the dock.

4.8 Security. Lessee shall be fully responsible for security of the Property and shall provide a security fence around the Property, the configuration and location of which will be agreed upon between the Port and Lessee.

4.9 Maintenance of Existence. Lessee shall, for the Lease Term and for a minimum of two years thereafter, maintain its existence and qualification to do business in the State and shall not dissolve or otherwise dispose of all or substantially all of its assets nor merge into or consolidate with any other entity or permit one or more entities to consolidate or merge with it, except as permitted in Sections 11.1 or 11.2 below.

## SECTION 5 PORT RIGHTS, REPRESENTATIONS & OBLIGATIONS

5.1 Delivery of Property. Lessee shall have the right to possession of the Property and Licensed Area as of the Effective Date. In the event the Port shall permit Lessee to occupy the Property and Licensed Area for any reason prior to the Effective Date, such occupancy shall be subject to all provisions of this Lease, except as otherwise agreed in writing between the parties. Unless otherwise stated herein, early or delayed possession shall not advance or defer the Expiration Date of this Lease. Basic Rent will not become due until the Rent Commencement Date, as provided in Section 3.

5.2 Condition of Property. Subject only to the provisions of Section 5.3, 6.3 and Section 13.4, the Port, without limitation, makes no warranties or representations regarding the condition or suitability of the Property and Licensed Area for Lessee's intended use. Lessee has inspected and accepts the Property and Licensed Area in "AS IS" condition upon taking possession. Except as

JACOBBA/PBLKOLA.WP  
February 23, 1996

otherwise provided in this Lease, the Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by any condition of the Property and Licensed Area. To help Lessee determine the condition of the Property and Licensed Area, Lessee has conducted an environmental audit of the Property and Licensed Area. This environmental audit (the "Initial Audit") was conducted in three (3) parts, by the firm of PTI on April 19, 1995 and by the firm of EMCON on May 22, 1995 and August 30, 1995. The Initial Audit is attached as Exhibit "F" and has been reviewed and accepted by the Port. The Port hereby acknowledges that Lessee shall have no responsibility for clean-up or remediation of any of the environmental problems documented as in existence by this Initial Audit. The Port agrees to clean up and remediate all environmental problems set out in the Initial Audit, in accordance with the requirements and procedures outlined on Exhibit "G." The Port shall be responsible to either remove all contamination set out in the Initial Audit or remove such contamination to the extent required by law and as necessary to allow Lessee to conduct its operations on the Property and the Licensed Area without danger and within acceptable limits under Environmental Laws (defined in Section 6). In the event any discovered contamination is legally left in place, that contamination shall be the responsibility of the Port and Lessee shall have no obligation to clean it up. Unless otherwise agreed to in writing by the Port or provided for elsewhere in this Lease, the Port shall have no other liability to Lessee for any environmental problems nor shall the Port have any responsibilities to bring the Property and the Licensed Area into compliance with any laws, including, without limitation, any building or occupancy codes.

### 5.3 Port Construction, Repair and Maintenance Obligations.

5.3.1 Roadways and Common Areas. The Port shall be responsible for repair and maintenance of all Port roadways and the Common Areas. Lessee shall inform the Port of any repairs or maintenance that needs to be done in these areas and the Port will take prompt action to respond to Lessee's concerns.

5.3.2 Dock Repair and Dredging. Prior to the Rent Commencement Date of this Lease, the Port, at its sole cost, shall complete construction of the following: installation of the dock fender system; completion of the walkway along the dock face; completion of the gangway and hand rails to the upstream dolphin; completion of the concrete curbing at each end of the dock; installation of the guard rails at the entrance ramp; and installation of any other dismantled dock handrails currently located in the Licensed Area but not yet installed. The Port shall maintain the dock structure and dock fendering system. The Port shall also maintain a minimum dredge depth of minus forty (40) feet

JACOB B PBLKGLA.WP  
February 23, 1996

below Columbia River Datum and shall perform a reconnaissance dredge depth survey at least every two (2) years. As used herein, the term "Columbia River Datum" refers to a gauge established by the United States Army Corps of Engineers which marks the low water profile of the Columbia River and is used as a basis for measuring channel depth. In the event Lessee has reason to believe the dock structure or fendering system need maintenance, or dredging needs to be done, Lessee shall give the Port written notice of such need, specifying the maintenance requirement and the current problem caused thereby. Within ten (10) business days of receipt of such notice, the Port shall inspect the facilities or survey the berth, as identified in Lessee's notice, in order to determine the scope of the maintenance required. Lessee may accompany the Port staff when such inspection is done, if Lessee so desires. The Port may also ask Lessee to have someone accompany Port personnel if there is any question concerning the repairs needed or a particular concern of Lessee. The Port will then proceed with all reasonable dispatch to promptly make all repairs, at its cost, and as necessary to allow Lessee to continue its vessel loading and unloading operations described in this Lease. The Port shall not, however, be responsible to repair or cleanup any damage caused by the negligence of Lessee or its agents. The Port shall have no other responsibility for the repair and maintenance of the Property, unless otherwise specifically stated herein.

5.3.3 Rent Abatement During Repairs. Except as stated in this Section 5.3.3, the Port shall have no liability for interference with Lessee's use of the Property, the Bond Financed Improvements and/or Licensed Area which might result from the Port's repair, maintenance and dredging obligations and the Port's performance of such obligations shall not be construed as a constructive eviction or other eviction of Lessee. Lessee and the Port shall cooperate in scheduling the maintenance, repairs and dredging to be performed by the Port. Rent shall not be reduced during performance of any such maintenance, repair or dredging period unless such maintenance, repairs or dredging cause Lessee's business to be shut down completely for three (3) consecutive weeks or longer. In that case only, no Basic Rent will be due after such three consecutive week period until Lessee's business can operate again. Lessee also releases the Port from any claim for loss of use or lost profit arising from berth or dock maintenance, except when Lessee's operations are completely shut down for a period of three (3) consecutive weeks or more in order to allow the Port to perform maintenance caused by normal wear and tear, including normal maintenance dredging and fender pile replacement or structural deficiencies.

5.3.4 Limitation on Damages, Rent Abatement. The Port shall be liable to Lessee for damages to Lessee's operations that result from the Port's failure to perform its obligations set forth

JACOB\B\BLKGLA.WP  
February 23, 1996

in Sections 5.3.1 and 5.3.2 in a timely manner. However, as long as the Port performs the reconnaissance dredge depth survey every two (2) years and acts prudently based on the results of that survey, the Port shall have no liability for Rent abatement or any other damages if the depth becomes too shallow in between reconnaissance surveys so long as the Port takes the necessary action to restore the needed depth as promptly as is reasonably possible upon becoming aware of the need for additional dredging. The Port shall not be responsible for damages (including lost profit and lost use) to Lessee if the repair work is necessitated by acts of God, nature or other third parties. In the event of damage due to an act of God, nature, or the government, the Port does agree to abate one-half (1/2) of Lessee's Minimum Basic Rent if the damage caused Lessee's operations to be shut down completely for a period of three weeks or longer. Any repair or clean-up necessitated by the negligence or breach of this Lease by Lessee, Lessee's employees, agents, contractors or invitees, including the clean-up and disposal of Hazardous Substance contaminated dredge materials where the Hazardous Substance contamination was caused by Lessee, which would otherwise be the responsibility of the Port, shall be Lessee's responsibility and shall be made at Lessee's sole expense, and no Rent abatement will be allowed. If Hazardous Substance contamination of dredge spoils is discovered during normal dredging operations, which contamination consists of materials which were used by, handled by or delivered to Lessee for use in Lessee's operations, then the Port shall pay the cost of the ordinary dredging and disposal and Lessee shall pay any difference in cost caused by the contamination unless Lessee can reasonably show that the contamination was caused by the Port or parties unrelated to Lessee's operations. Should the Port or any of its agents, tenants, invitees or licensees authorized to use the Licensed Area or the Access Corridor cause damage to the Property or the Licensed Area during such authorized use, then the Port will promptly reimburse Lessee for any reasonable losses sustained by Lessee as a direct result of the damage caused to the Property or Licensed Area by the Port or any of the above-described Port authorized parties. Unless Lessee has exercised its right not to Restore the Property and the Bond Financed Improvements, as described in Section 8.3, the Port agrees that it shall repair any damage to the Licensed Area, as defined Section 1.3.2., unless such damage is damage is caused by Lessee or Lessee's employees, agents, customers, contractors or other invitees. If the damage is caused by Lessee or Lessee's employees, agents, customers, contractors or other invitees then Lessee shall be responsible to repair the damage, but only to the extent the damage is not covered or would not have been covered by the insurance the Port is required to procure under Section 7.7. Notwithstanding the foregoing, nothing contained in this Section 5.4 shall preclude the Port or its insurance carrier from seeking recovery for any such damage

JACOBVPBLKGLA.WP  
February 23, 1996

directly from any of Lessee's customers, contractors or other invitees who caused the damage.

5.3.5 Lessee's Right to Repair. If Lessee has informed the Port that any portion of the Licensed Area which the Port is responsible to repair is in need of an emergency repair which, if not made will significantly hinder or halt Lessee's vessel loading and unloading operations or will constitute a safety hazard, and the Port fails to initiate such repairs within twenty-four (24) hours of such notice from Lessee, then Lessee shall be entitled to make the repairs necessary to restore the Licensed Area to a safe and operable condition and shall be reimbursed for its reasonable costs of doing so by the Port. This right to repair shall only exist in emergency repair situations after notice to the Port and the Port's failure to act on such notice.

5.4 Rail Track Location and Use. The Bulk Cargo Facility was designed to accommodate an eventual total of four (4) railroad loop tracks. Right-of-way for two (2) loop tracks is included in this Lease and the Port reserves rights for use of two additional loop tracks that it may develop in the future. The Port also reserves the right to relocate, at Port expense, any rail trackage, roadways and parking areas to a configuration that will afford Lessee the same capacity and function and does not unreasonably interfere with or increase the costs of Lessee's operations, if the Port determines such relocation would be beneficial for other development at Terminal 5. The Port shall be entitled to use and to allow other Port tenants who are leasing the adjacent Port property, shown on Exhibit "A" and identified thereon as the "Port Expansion Area", to use Lessee's loop tracks on a secondary use basis, at Lessee's reasonable discretion, provided such use would not interfere with Lessee's operations. Should the Port, or another Port tenant authorized by the Port to use the trackage damage the trackage in the course of such use, the Port will promptly reimburse Lessee for the cost of the repairs and for any other reasonable losses sustained by Lessee as a direct result of the damage caused to the trackage. In the event the Port does develop additional loop trackage, Lessee shall have a secondary use right to use that additional trackage. If the Port wishes to use or to allow its tenants described above to use the loop tracks, it shall request the right to use the tracks by sending Lessee a written request in the same manner described at the end of Section 1.3.2. and Lessee shall respond as provided in Section 1.3.2.

5.5 Port Authority Over Common Areas. In addition to any other rights granted by law or by this Lease, the Port, acting reasonably, reserves the right to expand or contract the boundaries of the Common Areas and correspondingly adjust the Common Area Assessment; to change, modify, or expand Port Development Standards for the use of the Common Areas; to permit the use of the Common

JACOBVPBLKGLA.WP  
February 23, 1996

Areas by others in such manner as the Port may from time to time determine; to close all or any portion of the Common Areas (so long as Lessee still has adequate ingress and egress to the Property and Licensed Area); to construct additional buildings or other improvements in the Common Areas and to adjust the Common Area Assessment accordingly; and to evict anyone from the Common Areas who fails to comply with any applicable laws, including applicable Port Rules.

5.6 Audit Rights. The Port, upon reasonable notice to Lessee, shall have the right to conduct an audit of such records of Lessee as may be necessary to confirm compliance with all terms of this Lease and to verify payment of all Rent due under this Lease. Unless otherwise provided herein, such review shall be limited to Lessee's journals and other documents related to sales and accounts receivable transactions, so long as they provide sufficient independent verification of tonnage and rates used to derive Rent payment amounts to the Port. Lessee agrees to keep true and accurate accounts, records, books and data and to follow standard and accepted accounting principles in the keeping of such records. Upon request, Lessee shall provide the Port with Lessee's most current annual audited financial statements. The Port agrees to keep the information it reviews pursuant to this Section confidential to the extent permitted by law and agrees to use the information obtained only for the purposes set forth in this Lease.

## SECTION 6 ENVIRONMENTAL OBLIGATIONS OF LESSEE

6.1 General. The following provisions of this Section 6 shall only apply to all environmental obligations of the parties with respect to Lessee's construction and operation of its Bulk Cargo Facility under the terms of this Lease, the Facilities Lease and the Construction Contract. Lessee shall be responsible for conducting its Bulk Cargo Facility operation on the Property and in the Licensed Area in accordance with all applicable Environmental Laws and in a manner that does not result in or cause "Hazardous Substance" contamination (as those terms are defined and utilized below) to the Property, the Bond Financed Improvements, the Licensed Area or any other properties or waterways.

6.2 Definitions. As used in this Lease, the following terms shall be defined as follows:

6.2.1 "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which in any way govern materials or substances or relate to the protection of health, safety or the environment.

6.2.2 "Hazardous Substances" shall be interpreted in the broadest sense to include any substance, material or product defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Laws.

6.2.3 "Environmental Costs" shall be interpreted in the broadest sense to include, but shall not necessarily be limited to: (i) costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) all claims of third parties, including governmental agencies, for damages, response costs or other relief under any Environmental Laws; (iii) the cost, expense or loss as a result of any injunctive relief, including preliminary or temporary injunctive relief under any Environmental Laws; (iv) all expenses of evaluation, testing, analysis, clean-up, remediation, removal and disposal relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (v) all expenses of reporting the existence of Hazardous Substance contamination or the violation of Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (vi) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom, or any bankruptcy proceeding, whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone and telefax charges and other expenses incurred relating to violations of Environmental Laws or use of Hazardous Substances; and (vii) any damages, costs, fines, liabilities and expenses which are claimed to be owed by any federal, state or local regulating or administrative agency based on any violation of Environmental Laws or the use of Hazardous Substances.

6.3 Initial Environmental Audit and Periodic Scheduled Audits. Prior to the Effective Date of this Lease, Lessee conducted an Initial Audit of the Property and Licensed Area, as described in Section 5.2. The Port has agreed to reimburse Lessee for half of the cost of this Initial Audit. The Port and Lessee have both received signed and certified duplicate original copies of the Initial Audit report and have carefully reviewed it. This Initial Audit has been accepted by both Lessee and the Port and shall be used as a baseline for determination of all potential future environmental liability. Therefore, if Hazardous Substance contamination is later found that was not noted in this Initial Audit, a rebuttable presumption will exist that Lessee is responsible for such Hazardous Substance contamination. After the Effective Date of this Lease, Lessee and the Port shall perform regularly scheduled thorough environmental audits of the Property, the Bond Financed Improvements and Licensed Area ("Periodic

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February 23, 1996

Audits"). Periodic Audits shall take place on or before the third anniversary of the Effective Date of this Lease and every three (3) years thereafter. These Periodic Audits shall be of the same scope as the Initial Audit, unless both parties agree to a different approach. Furthermore, during the last three (3) years of the Lease Term, Periodic Audits will be conducted each year. Lessee or the Port may require that any one or more of these final three (3) Periodic Audits be as broad in scope as may reasonably be required to assist Lessee and the Port in discovering Hazardous Substance contamination that must be removed by Lessee prior to the termination of this Lease. Additionally, the scope of the Periodic Audit shall be expanded, to the extent the Port, acting reasonably, deems necessary, if evidence of contamination from Hazardous Substances is discovered. The cost of the Periodic Audits shall be shared equally by Lessee and the Port. However, if the Periodic Audit finds evidence of contamination from Hazardous Substances that was not found by the Initial Audit that causes the auditor to recommend that additional testing be done, the cost of the additional testing shall be the sole responsibility of Lessee. In the event such Hazardous Substance contamination or a violation of any Environmental Law is discovered that was not found by the Initial Audit, Lessee shall take all steps required by law and under this Lease to clean up the Hazardous Substance contamination and to pay all related costs, including fines associated with such Hazardous Substance contamination or Environmental Law violation unless Lessee proves that such Hazardous Substance contamination or Environmental Law violation was caused by the Port or by any of the Port's tenants, agents, licensees or invitees while they were exercising their Port given access rights to the Property, the Bond Financed Improvements, or the Licensed Area by the Port, or by an identified third party (including Port tenants) unrelated to Lessee and that such Hazardous Substance contamination or Environmental Law violation was not in any way related to Lessee's operations or Lessee's negligence. Likewise, Lessee shall not be responsible to pay for Environmental Costs if such Hazardous Substance contamination or Environmental Law violation was caused by the Port or by one of the Port's other tenants, agents, invitees or licensees while they were exercising their Port given access rights to the Property, the Bond Financed Improvements or the Licensed Area by the Port, or if Lessee can prove that an identified third party (including Port tenants), unrelated to Lessee, caused such Hazardous Substance contamination and that such Hazardous Substance contamination or Environmental Law violation was not in any way related to Lessee's operations or Lessee's negligence (including failure to maintain the security requirements set forth in this Lease).

6.4 Limited Business Use of Hazardous Substances. Lessee may, in the normal course of Lessee's business and to the extent necessary for Lessee's permitted use of the Property, the Bond

JACOB\B\BLKOLA.WP  
February 23, 1996

Financed Improvements and Licensed Area, use certain Hazardous Substances on the Property, the Bond Financed Improvements and in the Licensed Area in compliance with all of the following conditions: (a) use of such Hazardous Substances is in compliance with all Environmental Laws; and (b) use of such Hazardous Substances does not expose the Property, the Bond Financed Improvements, the Licensed Area or properties identified on Exhibit "H" to any meaningful risk of Hazardous Substance contamination or damage. Lessee shall be permitted to use only those Hazardous Substances on the Property and in the Licensed Area as have been specifically identified and consented to, in writing, by the Port and only in such quantities as have been so consented to by the Port. The Port may condition its consent to the use or presence of any Hazardous Substance on the Property, the Bond Financed Improvements and/or in the Licensed Area upon Lessee's giving the Port such additional assurances as the Port, in its sole discretion, deems necessary to protect itself, the public, the Property, the Bond Financed Improvements, the Licensed Area and the environment including, but not limited to, the installation (and removal on or before termination of the Lease) of reasonable protective modifications to the Property, the Bond Financed Improvements and/or Licensed Area or an increase in the security deposit and insurance coverage. Hazardous Substances already consented to by the Port are listed on the attached Exhibit "I." For purposes of this Section 6.4, Lessee shall not be required to list on Exhibit "I" ordinary household cleaners and office supplies readily available over-the-counter for normal household cleaning and office uses, so long as these cleaners and supplies are not used in large quantities and are used for their normal and ordinary intended uses.

6.5 Environmental Inspection. In addition to conducting the Periodic Audits referenced above, the Port reserves the right to inspect for Hazardous Substances, and/or Lessee's management of the Hazardous Substances, listed on Exhibit "I" on the Property, the Bond Financed Improvements and Licensed Area at any time, and from time to time. If the Port, at any time during the term of this Lease or any extension thereof, has reason to believe that Lessee is handling Hazardous Substances in violation of this Lease or in any manner that may result in Hazardous Substance contamination, the Port may, without limiting its other rights and remedies, conduct an environmental audit or environmental assessment ("Environmental Investigation"), at Port cost, with respect to such matters of concern to the Port. If feasible, the Port will contact Lessee in advance of such Environmental Investigation in order to attempt to resolve its concerns without the need for an Environmental Investigation. Lessee agrees to cooperate with all such preliminary inquiries and Environmental Investigations. Lessee shall be given a copy of the Environmental Investigation results. If such Environmental Investigation reveals Hazardous

JACOBBI\BBLKOLA.WP  
February 23, 1996

Substance contamination or a violation of any Environmental Law for which Lessee is responsible under this Lease, Lessee shall be responsible to fully reimburse the Port for all of its actual and reasonable Environmental Investigation expenses. Reimbursement must be made within thirty (30) days after the date the Port invoices Lessee for such expenses.

6.6 Safety. Lessee shall maintain Material Safety Data Sheets ("MSDS") for each and every Hazardous Substance used by Lessee, Lessee's agents, employees, contractors, licensees or invitees on the Property and in the Licensed Area, as required under the Hazard Communication Standard in 29 CFR §1910.1200, as it may be amended or redesignated from time to time, and comparable State and local statutes and regulations. In order to ensure that such information is available to the Port in the event of a Hazardous Substance spill or other emergency, all such information shall be kept current at all times and a copy of all such MSDS shall be kept in a place known to and easily accessible to the Port.

6.7 Disposal of Hazardous Substances. Except as allowed by state and/or federal discharge permits, including any pretreatment conditions contained therein, approved, in writing, by the Port, Lessee shall not dispose of any Hazardous Substance, regardless of the quantity or concentration, within the storm and/or sanitary sewer drains and plumbing facilities within the Property, the Bond Financed Improvements, the Licensed Area or other property of the Port. The disposal of Hazardous Substances shall be in approved containers to be removed from the Property and/or the Licensed Area, only in accordance with the law. If Lessee knows or has reasonable cause to believe that any release of a Hazardous Substance has come to be located on or beneath the Property, the Bond Financed Improvements and/or Licensed Area, Lessee must promptly give written notice of that condition or suspicion to the Port.

6.8 Notice to Port. Lessee shall promptly notify the Port upon becoming aware of a violation or alleged violation of any Environmental Law pertaining to this Lease and/or: (1) of any leak, spill, release or disposal of a Hazardous Substance on, under or immediately adjacent to the Property, the Bond Financed Improvements and/or Licensed Area or threat of or reasonable suspicion of any of the same; and/or (2) of any notice or communication from a governmental agency or any other person directed to or received by Lessee relating to such Hazardous Substance contamination on, under or adjacent to the Property and/or Licensed Area or any violation or alleged violation of any Environmental Laws with respect to the Property, the Bond Financed Improvements and/or Licensed Area.

6.9 Environmental Remediation. In the event of any Hazardous Substance contamination or any violation of Environmental Laws for which Lessee has responsibility under this Lease, Lessee shall immediately undertake all acts necessary or appropriate to investigate, contain, clean up and remove the Hazardous Substance contamination. Lessee shall also undertake, within a reasonable time, all investigatory, remedial and/or removal actions necessary or appropriate to ensure that any such Hazardous Substance contamination is eliminated. The Port shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individuals conducting such procedures. Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the property or water affected thereby (including, without limitation, the soils or water table thereof), at Lessee's own cost and expense, all Hazardous Substance contamination, which is the responsibility of Lessee under this Lease, which has been released during the term of this Lease and shall restore the Property, the Bond Financed Improvements, the Licensed Area and all other Hazardous Substance contaminated areas to their pre-contamination condition, in conformance with all applicable governmental rules and regulations. Any Environmental Costs incurred by or assessed against the Port for which Lessee is responsible pursuant to this Lease shall be promptly paid by Lessee after the Port incurs the obligation to pay such Environmental Costs or determines that such an Environmental Cost is owing and the Port so notifies Lessee, in writing. If Lessee discovers contamination on the Property, the Bond Financed Improvements, the Licensed Area or elsewhere that was caused by some other third party and is not the responsibility of Lessee under this Lease or the law, Lessee shall still promptly notify the Port of the problem but shall not be responsible for any clean-up or remediation. The Port will be responsible for the clean-up of any Hazardous Substance contamination on the Property, the Bond Financed Improvements and in the Licensed Area caused by the Port or by the Port's tenants, agents, invitees and licensees while they were exercising their Port given access rights to the Property, the Bond Financed Improvements and/or the Licensed Area by the Port.

6.10 Annual Certification. Not later than thirty (30) days after the end of each Lease Year, Lessee shall provide a written certification to the Port which certifies that Lessee has not received any notice from any governmental agency regarding a violation of any Environmental Law; or, if such notice was received, Lessee shall explain the reason for the notice, what has been done to remedy the problem and shall attach a copy of the notice. Lessee shall also certify that Lessee has obtained and has in force all permits required under all Environmental Laws. Copies of all such permits shall be made available to the Port upon request.

JACOBBI\PBLKGLA.WP  
February 23, 1996

6.11 Documentation of Hazardous Substances. Lessee shall maintain for periodic inspection by the Port and deliver to the Port, at the Port's request, true and correct copies of the following documents (hereinafter referred to as the "Documents") related to the handling, storage, disposal and emission of Hazardous Substances involved in Lessee's operations at the Bulk Cargo Facility, concurrently with the receipt from or submission to a governmental agency: Permits; approvals; reports and correspondence; storage and management plans; spill prevention control and countermeasure plans; other spill contingency and emergency response plans; documents relating to taxes for Hazardous Substances; and notice of violations of any Environmental Laws.

6.12 Hazardous Substance Contamination Caused by Port or Other Port Invitees in Access Corridor. Lessee shall not be responsible for any Hazardous Substance contamination or violation of any Environmental Laws caused to the Property, the Bond Financed Improvements and/or Licensed Area by the Port or any Port tenants, agents, invitees or licensees (except Lessee) while they were exercising their Port given access rights through the Access Corridor shown on Exhibit "A" by the Port. A rebuttable presumption will still exist, however, that any Hazardous Substance contamination found on the Property, the Bond Financed Improvements and/or the Licensed Area but outside the marked Access Corridor was caused by Lessee. This presumption will not exist within the Access Corridor. Subject to the limitations of Section 13.15, the Port will be responsible for reasonable damages suffered by Lessee as a result of a violation of an Environmental Law and/or Hazardous Substance contamination on the Property, the Bond Financed Improvements and/or in the Licensed Area caused by the Port or by the Port's tenants, agents, invitees and licensees while they were exercising their Port given access rights to the Property or the Licensed Area by the Port.

## SECTION 7 INDEMNITY, INSURANCE

7.1 Lessee's General Indemnity. Except as otherwise provided herein, upon the Effective Date of this Lease, Lessee agrees to defend, indemnify, and hold harmless the Port from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs"), which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (1) the act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors; (2) the use, occupation, management or control of the Property, the Bond Financed Improvements and/or the Licensed Area by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the

JACOBBI\BBLKGLA.WP  
February 23, 1996

Property or in the Licensed Area, except as provided in Section 6.3; (3) any condition created in or about the Property and/or the Licensed Area by any party, other than the Port or an agent, tenant, invitee or licensee of the Port while they were exercising their Port given access rights to the Property and/or the Licensed Area by the Port, including any accident, injury or damage occurring on or about the Property, the Bond Financed Improvements and/or Licensed Area after the Effective Date except as provided in Section 6.3; (4) any breach, violation or nonperformance of any of Lessee's obligations under this Lease; (5) any damage caused by any of Lessee's contractors, subcontractors, employees and other agents or invitees on or to the Property and/or Licensed Area, or other properties, that result from the activities associated with this Bulk Cargo Facility. Lessee agrees that it will cooperate, to the fullest extent permitted by its insurance carrier, in selecting legal counsel acceptable to the Port, which acceptance shall not be unreasonably withheld, to defend any matter covered under this Section 7.1 and under Section 7.3 below.

7.2 Port's General Indemnity. Subject to statutory limitations on Port liability, upon the Effective Date of this Lease, the Port agrees to defend, indemnify, and hold harmless the Lessee from and against any and all actual or alleged Costs which may be imposed upon or claimed against the Lessee and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any breach, violation or nonperformance of the Port's obligations under this Lease, any breach of the Port's warranties under this Lease, or any damage caused by any of the Port's contractors, subcontractors, employees and other agents acting on behalf of the Port on or to the Property or Licensed Area.

7.3 Lessee's Environmental Indemnity. In addition to all other indemnities provided for by this Lease or by law, except as provided herein, Lessee shall be solely responsible for and agrees to defend, indemnify, and hold harmless the Port from and against all Environmental Costs claimed or assessed against the Port arising, in whole or in part, directly or indirectly, from acts or omissions of any person or entity at or about the Property, the Bond Financed Improvements and/or Licensed Area after the Effective Date of this Lease, or earlier if caused by Lessee or Lessee's agents or invitees. Lessee shall not be required to defend, indemnify, or hold harmless the Port against any environmental claims for which the Port is responsible under this Lease. This indemnification shall require Lessee to reimburse the Port for any diminution in value of the Property, the Bond Financed Improvements and/or the Licensed Area or other Port property, caused by Hazardous Substance contamination that is Lessee's responsibility under this Lease, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property,

JACOBVPBLKGLA.WP  
February 23, 1996

the Bond Financed Improvements, the Licensed Area or any other Port property, including damages arising from any adverse impact on marketing of space in or near the Property and/or Licensed Area, including other Port property. Lessee's obligations shall not apply if the Hazardous Substances were placed on or about the Property, or in the Licensed Area by the Port, the Port's agents, tenants, invitees or licensees or were present on the Property or in the Licensed Area prior to Lessee's entry onto the Property and Licensed Area. Lessee shall be solely responsible for any Hazardous Substances brought onto the Property, the Bond Financed Improvements and/or the Licensed Area except as such responsibility is specifically excluded by various provisions of this Lease. This Environmental Indemnity is in addition to, and not in lieu of, the indemnity provision set forth in Section 7.1. Notwithstanding the foregoing, Lessee shall not be responsible for, and does not indemnify the Port for, any actions of the Port or for such actions of any Port tenants, agents, invitees or licensees committed while such parties were exercising their Port given access rights to the Property, the Bond Financed Improvements and/ or the Licensed Area by the Port pursuant to Sections 1.3.3 and 5.4 which cause Hazardous Substance contamination or a violation of any Environmental Law. Lessee is also not responsible for Hazardous Substance contamination by those identified third parties unrelated to Lessee for which Lessee is not responsible as specifically described in Section 6.3 of this Lease.

7.4 Port's Environmental Indemnity. Subject to statutory limitations on Port liability, the Port agrees to defend, indemnify, and hold harmless the Lessee from and against any and all actual or alleged Environmental Costs claimed or assessed against the Lessee which result from Hazardous Substance contamination discovered on the Property, the Bond Financed Improvements and/or in the Licensed Area which was disclosed in the Initial Audit. The Port also agrees to defend, indemnify, and hold harmless the Lessee from and against any and all actual or alleged Environmental Costs claimed or assessed against the Lessee which result from a violation of an Environmental Law by or Hazardous Substance contamination on the Property, the Bond Financed Improvements and/or Licensed Area caused by the Port or the Port's tenants, agents, invitees or licensees during their use of the Licensed Area or the Access Corridor through Lessee's Property with Port permission.

7.5 Insurance Requirements. Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. Insurance policies required by this Lease may have

reasonable deductible amounts. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

7.5.1 General. On or before the Effective Date, Lessee shall provide the Port with certificates of insurance from Lessee's insurance carrier or broker establishing the existence of all insurance policies required under this Section 7. Thereafter, the Port must receive notice of the expiration or renewal of any policy at least thirty (30) days prior to the expiration date of any insurance policy. No insurance policy may be canceled without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the entire Lease Term. If insurance is canceled without replacement coverage in place, which meets all of the requirements of this Section 7, or without notice to the Port, then such cancellation shall be deemed in violation of this Lease. The Port shall also be given certified copies of Lessee's policies of insurance, upon request.

7.5.2 Additional Insured/Loss Payee. The Port and the trustee named pursuant to the Ordinance (the "Trustee") shall be named as an additional insured in each required policy and, for purposes of damage to the Property and the Bond Financed Improvements, as a loss payee. Such insurance shall not be invalidated by any act, neglect or breach of contract by Lessee.

7.5.3 Primary Coverage. The required policies shall provide that the coverage is primary, and will not require any contribution from any insurance or self-insurance carried by the Port.

7.5.4 Carrier Rating. All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or equivalent.

7.5.5 Periodic Review. The Port shall have the right to periodically review the types and limits of insurance coverage required and in the event the Port determines, using standards generally employed in the insurance industry for assessment of businesses engaged in activities akin to those of Lessee, that such limits should be increased or lowered or such types added or eliminated, the Port shall provide notice to Lessee of such determination and Lessee shall, if limits are increased, provide the Port with an updated certificate of insurance. The Port also reserves the right to require a change of insurance carrier if the Lessee's carrier's rating drops below an A rating or equivalent. Lessee shall be given at least thirty (30) days notice of any such required changes. Lessee shall be entitled to request that the Port review the insurance requirements of this Lease if Lessee

reasonably believes that any aspect of coverage should be re-examined.

7.6 Required Insurance. At all times during this Lease, Lessee shall provide and maintain the following types of coverage:

7.6.1 Liability Insurance. Lessee shall maintain an occurrence form commercial general liability policy (including coverage for broad form contractual liability; sudden and accidental spill coverage on land and on water; wharfingers' and stevedoring liability); and automobile liability insurance policy or policies for the protection of Lessee and the Port, insuring Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Property, the Bond Financed Improvements, Lessee's use of the Licensed Area and/or occasioned by reason of the operations of Lessee. Each coverage specified herein shall be in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit for bodily injury and property damage for Premises Liability and for Products/Completed Operations Liability.

7.6.2 Property Insurance. Lessee shall maintain, in full force and effect during the Lease Term, "All Risk" property insurance (including flood and earthquake coverage), covering all buildings, fixtures, equipment, and all other Improvements and Bond Financed Improvements, located on the Property and in the Licensed Area. Coverage shall be in an amount equal to NINETY PERCENT (90%) of the new replacement value thereof or for ONE HUNDRED PERCENT (100%) of the outstanding balance owed on the Bonds at all times, whichever is greater. Such insurance shall name the Trustee and the Port as additional insureds and as loss payees as to their full interest in the insured property.

7.6.3 Workers' Compensation Insurance. Lessee shall maintain in force Workers' Compensation insurance or self-insurance for all of Lessee's employees, including coverage for Employer's Liability, and, if applicable, Longshore and Harbor Workers' Compensation Act.

7.7 Port Dock Insurance. The Port shall be responsible to keep and maintain liability and property insurance on the dock and wharf facilities located in the Licensed Area, which insurance shall meet the requirements of this Section 7.

7.8 Waiver of Subrogation. Except as limited by this Section 7, the parties hereto waive any right of action that they and/or their insurance carriers might have against the other for loss or damage, to the extent that such loss or damage is covered by any property insurance policy or policies and to the extent that

JACOB\BPBLKGLA.WP  
February 23, 1996

proceeds (which proceeds are free and clear of any interest of third parties) are received by Lessee or the Port. This waiver of subrogation shall not include any deductible amounts.

## SECTION 8            DAMAGE OR DESTRUCTION

8.1 General Policy. If any Improvements and/or Bond Financed Improvements are damaged or destroyed by fire or other casualty, Lessee shall promptly notify the Port, the Trustee, the Credit Provider (defined in the Facilities Lease) and the Remarketing Agent (defined in the Facilities Lease). Except in those situations covered by Section 8.3, Lessee shall, at Lessee's sole expense, promptly repair, rebuild or restore (collectively "Restore" or "Restoration") any portion of the Property and Bond Financed Improvements, damaged or destroyed to substantially the same condition and character as immediately before the damage or destruction. Any Restoration of the Property and Bond Financed Improvements must result in a Bulk Cargo Facility which is at least equal in function and quality to the one that was damaged or destroyed. Any insurance proceeds received from Lessee's insurance carrier(s) shall be deposited in a separate account in the Construction Fund (defined in the Facilities Lease). The money from such separate account shall be requisitioned by Lessee in accordance with Section 3.9 of the Facilities Lease, and shall be applied by Lessee toward the Restoration. Such Restoration shall comply with all provisions of this Lease, Section 4.7 of the Ordinance (requires certifying to the Trustee within 20 days that rebuilding is complete) and the Facilities Lease.

8.2 Excess Proceeds After Restoration. In the event there are surplus net proceeds of insurance remaining after Restoration of the Property and Bond Financed Improvements under Section 8.1, then such surplus net proceeds of insurance shall be transferred by the Trustee for deposit into a separate account in the Bond Fund, and applied to redeem all or a portion of the Bonds in accordance with Section 4.7 of the Ordinance. If there are still surplus net proceeds of insurance remaining, then Lessee and the Port shall make an equitable distribution of the remaining proceeds in proportion to the respective values of the Port and Lessee Improvements that were damaged.

8.3 Other Options Following Damage/Destruction. If the damage or destruction described in Section 8.1 shall occur such that more than fifty percent (50%) of the total value of all Improvements and Bond Financed Improvements have been destroyed AND more than eighteen (18) years of the Lease Term have expired, Lessee shall have the option to decide whether to Restore the Property and the Bond Financed Improvements or whether this Lease and the Facilities Lease shall be terminated and the Bonds redeemed in accordance with the provisions of this Lease, the Facilities

JACOB\B\BLKGLA.WP  
February 23, 1996

Lease and the Ordinance. Lessee shall notify the Port, the Credit Provider, the Remarketing Agent and the Trustee within sixty (60) days of the damage or destruction of Lessee's decision. If Lessee chooses to Restore the Property and the Bond Financed Improvements, such Restoration shall be accomplished as provided in Section 8.1 above and in accordance with all other applicable terms of this Lease and the Facilities Lease. In the event Lessee chooses not to Restore the Property and the Bond Financed Improvements, Lessee shall have the option of terminating this Lease and the Facilities Lease provided Lessee provides sufficient additional funds, if the net proceeds from Lessee's insurance are insufficient, to redeem all Bonds, to remove all damaged or destroyed Improvements and Bond Financed Improvements, and return the Land to the condition required by Section 9 upon termination (including removal of any Improvements and Bond Financed Improvements that were not damaged, if requested by the Port). Lessee must also pay all other amounts due under this Lease and the Facilities Lease and the Ordinance, in accordance with Section 9.1 of the Facilities Lease and the applicable provisions of the Ordinance, including, without limitation, those provisions permitting extraordinary optional redemption of the Bonds. Additionally, in order to exercise this option not to Restore, Lessee must deliver to the Trustee and the Port an "Approval of Bond Counsel" to the effect that such use of the insurance proceeds and such failure to Restore will not impair the exclusion of the interest on the Bonds from the gross income of the Port thereof for federal income tax purposes. As used in this Lease, "Approval of Bond Counsel" shall have the same meaning as defined in Section 1.1 of the Ordinance.

8.4 Division of Proceeds Upon Termination. If Lessee elects not to Restore the Property and the Bond Financed Improvements pursuant to Section 8.3, then the net proceeds of any insurance shall be applied first to the redemption of the Bonds in accordance with Section 9.1 of the Facilities Lease and Sections 16.1 and 4.7 of the Ordinance. At the option of the Port, the balance of any insurance proceeds shall be used either to remove and dispose of some or all Improvements and Bond Financed Improvements in order to return the Land to the condition required under Section 9 upon termination, or the Port may choose to use the proceeds to Restore the Land and all or part of the Improvements and Bond Financed Improvements so that the Bulk Cargo Facility may be relet by the Port (understanding that if the Port elects to reconstruct, Lessee shall have no responsibility to contribute any additional funds to pay for reconstruction beyond the amount of the insurance proceeds required by this Lease). Restoration does not encompass the cost of clean-up of Hazardous Substance contamination if it is excluded from insurance coverage and Lessee shall remain liable for such uninsured costs. If any insurance proceeds remain after the Port has made this election and has either Restored the Facility or returned the Land to the condition required by Section 9, such

JACOB\B\BLKGLA.WP  
February 23, 1996

remaining proceeds shall be divided between the Port and Lessee in proportion to the value of their respective Improvements that were damaged or destroyed.

8.5 Prerequisites to Termination. Lessee shall only be entitled to terminate this Lease after all Bonds and fees and costs related thereto have been paid in full and all of Lessee's obligations under this Lease and the Facilities Lease have been satisfied.

8.6 Reconstruction Renewal Right. In the event that more than FIFTY PERCENT (50%) of the total value of all Improvements and Bond Financed Improvements are damaged or destroyed but are restored by Lessee, Lessee shall be entitled to extend this Lease as follows: So long as not prevented by the Ordinance and the Code, and provided an Approval of Bond Counsel is given to the Port and the Trustee, the parties will negotiate, in good faith, to extend this Lease or enter into a new Lease which will allow Lessee to continue to lease the Property for a term of up to thirty (30) years from the date the Improvements and Bond Financed Improvements are restored. Lessee may elect to have this Lease govern through the Expiration Date of this Lease (including the Renewal Option described in Section 2.2) and then negotiate terms for a new lease for the remainder of the additional lease period granted hereunder. Such new lease shall contain the Port's then current standard lease terms, with the rental rate based on the Port's then current rent policy, and this new lease will then control for balance of additional lease period granted hereunder. As used herein "Bond Counsel" shall mean an attorney or law firm acceptable to the Trustee and the Port, of nationally recognized standing in matters pertaining to the tax exempt nature of interest on bonds issued by the State and its political subdivisions, duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia.

## SECTION 9            TERMINATION OF LEASE

9.1 Duties on Termination. Upon expiration or earlier termination of this Lease, for any reason, Lessee shall deliver all keys to the Port and surrender the Property, the Licensed Area and all Bond Financed Improvements covered by the Facilities Lease, in good and clean condition, reasonable wear and tear excepted. Upon termination, all Lessee Improvements (including any buildings) shall, at the Port's option, become Port property and shall not be removed. In the alternative to the above, the Port may, at the Port's option, require Lessee to remove all or some of the Improvements and Bond Financed Improvements, in which case Lessee must promptly remove them and then repair any damage caused by such removal to the Land and Licensed Area. Notwithstanding the foregoing, however, Lessee shall not be required to remove Port

JACOBBI\PBLKGLA.WP  
February 23, 1996

Improvements unless Lessee has otherwise agreed, in writing, to remove them. In the restoration of the Land, the Bond Financed Improvements and Licensed Area, Lessee shall remediate for any Hazardous Substance contamination in accordance with the requirements of this Section 9 and regrade the Land to a reasonably flat condition. Subject to Sections 9.2 and 9.3, all repair and removal for which Lessee is responsible shall be completed prior to termination and surrender of the Property and Licensed Area. To ensure the orderly and proper termination of this Lease, Lessee and the Port shall conduct a thorough joint walk-through of the Property and Licensed Area, on or before the last day of the Lease Term, in order to verify the condition of the Land, the Licensed Area, all Improvements and the Bond Financed Improvements and to verify compliance with all terms of this Lease. Lessee shall also give the Port copies of all records and receipts in its possession which pertain to the Bulk Cargo Facility. If any original documents pertaining to the Bulk Cargo Facility such as title documents are requested by the Port, Lessee shall give the Port such original documents.

9.2 Lessee's Personal Property. So long as they have not been purchased with Bond proceeds or investment earnings thereon, Lessee's cargo inventory, other inventory, personal property owned by third parties, detachable curtains, blinds, office furnishings, telephone/telefax systems, office computers and supplies, rolling stock, vehicles, moveable vehicular stevedoring equipment, and spare parts purchased by Lessee (but only to the extent that the same parts in the machinery which were purchased with Bond proceeds and/or are covered by the Facilities Lease are in working order) shall remain the property of Lessee if placed on the Property or Licensed Area by Lessee, at Lessee's expense (collectively referred to as Lessee's "Personal Property"). Lessee shall, at Lessee's expense, remove from the Property and the Licensed Area any and all of Lessee's removable Personal Property listed above and shall repair any damage to the Property, the Bond Financed Improvements and/or Licensed Area resulting from the installation or removal of such Personal Property in accordance with the time frames set forth in Section 9.3. Title to any items of Lessee's Personal Property which remain on the Property or on the Licensed Area after the termination date of this Lease may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (a) retaining any or all of such Personal Property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such Personal Property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current default rate of interest as set forth in Section 3.9, from Lessee upon demand. The Port will give Lessee written notification of its above described election within six (6) months of the Lease termination.

JACOB\B\BLKGLA.WP  
February 23, 1996

9.3 Time for Removal. The time frame for removal of any Personal Property, Improvements, and Bond Financed Improvements that Lessee is required to remove from the Property and Licensed Area upon termination of this Lease shall be as follows: (a) on or before the Expiration Date; or (b) within six (6) months or such other reasonable period of time to be indicated in the written notice from the Port requiring such removal where the property to be removed is a Lessee Improvement or Bond Financed Improvement which Lessee is not required to remove except after election or notice by the Port. The Port shall make such an election at least six (6) months prior to the Expiration Date and shall give Lessee written notice thereof; or (c) if this Lease is terminated unexpectedly due to a casualty loss, condemnation, an Event of Default or for any other reason prior to the Expiration Date, then all removal required by the Port must occur within six (6) months of that actual early termination date. If this Lease is terminated unexpectedly and such termination was for any reason other than an Event of Default, Lessee shall have no obligation to pay Rent for a period of up to six (6) months following the unexpected termination date or receipt of the Port's written notice of which Improvements and Bond Financed Improvements must be removed, whichever shall occur later. The Port agrees to give Lessee such notice within thirty (30) days of the actual unexpected termination date of this Lease. If this Lease is terminated early due to an Event of Default or if Lessee fails to diligently pursue removal and clean-up for any reason which is not beyond its reasonable control, Lessee must continue to pay all Rent until such removal and clean-up required of Lessee under this Lease is completed.

9.4 Holding Over. Subject to Lessee's right to renew this Lease or enter into a new lease, if Lessee holds over after this Lease terminates, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance, at the Port's sole discretion. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by this Lease, except that the tenancy shall be from month-to-month, subject to the payment of all Basic Rent in advance, with the monthly Minimum Basic Rent being One Hundred Fifty percent (150%) of the Minimum Basic Rent in effect immediately prior to the holding over. Such a tenancy may be terminated at any time by written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to evict Lessee but the Port may still collect a charge for use of the Property at a rate equal to One Hundred Fifty percent (150%) of the Minimum Basic Rent rate.

9.5 Exit Audit and Remediation. Not sooner than six (6) months prior to the Expiration Date or otherwise agreed upon termination date of this Lease, and not later than two (2) months prior to the Expiration Date or otherwise scheduled termination date of this Lease, Lessee and the Port shall conduct an exit

JACOBBI\PBLKOLA.WP  
February 23, 1996

environmental audit (the "Exit Audit") of the Property, the Bond Financed Improvements and the Licensed Area to determine whether there is any Hazardous Substance contamination on or about the Property, the Bond Financed Improvements and/ or the Licensed Area. The scope of the audit shall be based on generally accepted industry standards and practices in effect at the time for such a liability release as is contemplated in Section 13.9. Such audit shall be conducted by an auditor agreed upon by the Port and Lessee. The parties will meet to agree on an environmental auditor and an alternate environmental auditor to conduct the Exit Audit twelve (12) months prior to the Expiration Date. If the parties cannot agree within three months' time (nine (9) months prior to the Expiration Date), then the auditor shall be selected by any Multnomah County Circuit Court judge. The costs of the Exit Audit shall be shared equally by the Port and Lessee. Lessee shall provide to the Port a supplemental update report to the Exit Audit as of the last day of the Lease Term. If the Exit Audit reveals Hazardous Substance contamination or possible Hazardous Substance contamination and the auditor therefore recommends additional testing and other audit expenses, those additional audit expenses shall be paid solely by Lessee if Lessee is responsible for such Hazardous Substance contamination under the terms of this Lease. After receipt of the Exit Audit report, Lessee shall promptly begin to clean up and/or remedy any Hazardous Substance contamination or violation of Environmental Laws revealed by the Exit Audit and its updates for which Lessee is responsible under the terms of this Lease, all at Lessee's sole cost and expense. Such remediation shall be performed in accordance with all applicable Environmental Laws. In the event Lessee fails to promptly remedy such Hazardous Substance contamination or violation of Environmental Laws, then the Port shall have the right to do so and to charge Lessee all resulting Environmental Costs. The Port shall give Lessee at least seven (7) days prior written notice of its intention to remedy the Hazardous Substance contamination or violation of Environmental Laws. Lessee agrees to pay to the Port all such Environmental Costs incurred by the Port within thirty (30) days after receipt of invoice from the Port. Such right shall be in addition to any other remedies available to the Port under this Lease, at law, or in equity. In the event this Lease terminates unexpectedly for any reason, this Exit Audit shall be conducted within thirty (30) days after the actual termination of this Lease by the firm that conducted the last Periodic Audit unless the parties agree to use another firm. Until such time as Lessee has fulfilled all the requirements of this Exit Audit after the termination of this Lease, Lessee shall be required to pay one-half (1/2) of the Minimum Basic Rent until all Hazardous Substance clean-up is completed. Notwithstanding the foregoing, if this Lease terminates due to an Event of Default, then Lessee shall be required to pay the hold-over rate set forth in this Section 9 until all of the requirements of this Section 9 have been fulfilled and Lessee has

JACOBBA/PBLKOLA.WP  
February 23, 1996

surrendered occupancy of the Property. The Port agrees to try to relet the Land to another user, if feasible, and to then credit Lessee if all or any portion of the Land is relet during the clean-up period. Said credit shall be in the amount of the actual ground rent or such other compensation for use of the ground received by the Port. If, as a part of the clean-up process the auditor recommends removal of Improvements or Bond Financed Improvements that the Port had otherwise instructed Lessee to leave in place, then Lessee may be required to remove those Improvements. If Lessee does not conduct the Exit Audit as required, and such failure to conduct was not caused by the Port, the Port may, at its sole option, and without further notice to Lessee, complete such Exit Audit and bill Lessee for all costs of conducting the Exit Audit. After this Lease has terminated and Lessee has completed all remediation activities that require disturbance of the Land and/or Licensed Area or occupancy of the Land and or Licensed Area, and the only ongoing activity required by the Port is environmental monitoring, Lessee shall no longer be required to pay the amounts set forth in this Section 9.5 above, but Lessee shall remain responsible for all additional clean-up and remediation work and all monitoring expenses associated with or required as a result of the monitoring. If monitoring results in the need for additional land disturbing activities to occur, then during any such activities, Lessee will again be responsible to pay the Port an amount equal to 1/2 the Minimum Basic Rent during the performance of such ground disturbing activities, subject to a credit for ground rent as described above, plus all costs associated with the Hazardous Substance contamination.

## SECTION 10      DEFAULT

10.1 Event of Default. The occurrence of any of the following shall constitute an "Event of Default" (also referred to as a "Default") of this Lease:

10.1.1 Default in Rent. If Lessee fails to pay any Rent within ten (10) days after such payment is due, the Port shall give Lessee written notice of such failure and Lessee shall have ten (10) days after receipt of such notice to pay the past-due Rent, plus all interest due thereon at the interest rate set forth in Section 3.9 in full. Failure to pay the Rent, plus all interest due thereon, in full within this ten (10) day period shall constitute an Event of Default. Once such notice with respect to Basic Rent has been given by the Port twice in any given Lease Year, no further notice shall be required for such Lease Year and thereafter for such Lease Year, Lessee shall be considered automatically in Default if Lessee fails to pay Basic Rent within ten (10) days after such Basic Rent payment is due. In addition to the foregoing, Lessee shall only be entitled to a total of thirty (30) notices of late Basic Rent payments during the entire Lease

JACOB\B\BLKOLA.WP  
February 23, 1996

Term. Once these thirty (30) notices have been given by the Port, no further notices shall be required and thereafter, Lessee shall be considered in Default if Lessee fails to pay Basic Rent within ten (10) days after such payment is due. Acceptance of late or partial payments of Rent by the Port shall not be considered a waiver of any Default, as more particularly set forth in Section 3.10.

10.1.2 Default of Environmental Covenants. Unless otherwise provided in this Lease, if Lessee violates any Environmental Law and/or if there is any Hazardous Substance contamination to any property for which Lessee is responsible under the terms of Sections 6 and 9 of this Lease, then Lessee must come into compliance with such Environmental Laws and clean up all such Hazardous Substance contamination within twenty (20) days of written notice of such violation(s) from the Port; provided, however, if the violation or contamination is of such a nature that it cannot be remedied by Lessee prior to the expiration of that twenty (20) day period, then this provision shall be complied with if Lessee is diligently pursuing such remediation and is acting in good faith to complete such remediation as quickly as is reasonably possible, provided that compliance must be achieved within the time frame mandated by any regulatory authority with enforcement authority over such Environmental Law or Hazardous Substance contamination. If Lessee fails to come back into compliance as described herein, an Event of Default will be deemed to have occurred.

10.1.3 Default in Other Covenants. Unless otherwise provided in this Lease, if Lessee fails to observe and perform any term, covenant, condition or agreement on its part contained in this Lease (other than the payment of Rent or Defaults of Environmental Covenants, as provided in Sections 10.1.1 and 10.1.2) within forty-five (45) days after receipt of written notice of such failure from the Port, such failure shall constitute an Event of Default; provided, however, that if the failure is of such a nature that it cannot be remedied by Lessee prior to the expiration of that forty-five (45) day period, then this provision shall be complied with if Lessee promptly begins correction of such failure upon receipt of such notice from the Port within that forty-five (45) day period and thereafter proceeds in good faith and with reasonable diligence to fully correct the failure as soon as practicable.

10.1.4 Default in Other Agreements. An Event of Default by Lessee under the Facilities Lease, the Ordinance or the Construction Contract (collectively, "Other Agreements") shall be treated as an immediate Event of Default hereunder.

10.1.5 Insolvency. To the extent permitted by the United States Bankruptcy Code, any of the following shall be considered an Event of Default if continued for a period of forty-five (45) days or longer:

(a) Lessee shall apply for, consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of the Lessee or of all or a substantial part of its property;

(b) Lessee shall admit, in writing, its inability, or be generally unable to pay its debts as such debts become due;

(c) Lessee shall make a general assignment for the benefit of its creditors;

(d) Lessee shall commence a voluntary case under the Bankruptcy Code;

(e) Lessee shall file a petition as a debtor seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or

(f) Lessee shall fail to controvert in the time provided by law or sixty (60) days, whichever occurs first, and in an appropriate manner, or acquiesce in writing to, any petition filed against Lessee in an involuntary case under the Bankruptcy Code.

10.1.6 Involuntary Proceedings. It shall be an Event of Default if a proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking:

(a) the liquidation, reorganization, dissolution or winding-up, or composition or readjustment of debts of the Lessee;

(b) the appointment of a trustee, receiver, custodian, liquidator or the like of the Lessee or of all or any substantial part of its assets; or

(c) similar relief with respect to the Lessee under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts and such proceeding or case shall continue undismissed, or an order, judgment, or decree approving or ordering the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days from the commencement of such proceeding or case or entry of such an order, judgment or decree, or an order for relief

JACOB\B\BLKGLA.WP  
February 23, 1996

against the Lessee shall be entered in an involuntary case under the Bankruptcy Code.

10.1.7 Default by Guarantor. Should Canpotex, one of the Guarantors referred to in Section 1.2, fail to perform pursuant to its Guarantee, cease to exist, file for or be forced into bankruptcy or become insolvent, then Lessee shall be considered to be in Default hereunder unless Lessee can provide an alternative Guarantor or Guarantors acceptable to the Port within the following twelve (12) months.

10.2 Repeat Violations. Notwithstanding the notice requirements of the foregoing Section 10.1.2 and Section 10.1.3, the Port need not give notice thereunder more than fifteen (15) times for repeat violations of any specific provision of this Lease during this Lease Term and the sixteenth (16th) act of noncompliance or violation by Lessee may be declared an immediate Event of Default for which no further notice (of forty-five (45) days or twenty (20) days, depending on the violation) need be given. The Port does agree that for violations sixteen (16) through twenty (20) it will give Lessee a ten (10) day notice, but in those instances, in addition to having to cure the violation within ten (10) days of receipt of such notice, Lessee must also pay the Port a penalty fee of ONE THOUSAND DOLLARS (\$1,000) per day until the violation is cured in order to avoid the declaration of an Event of Default. The parties agree that this is a negotiated and fair penalty amount. This Penalty shall be adjusted annually, based on the CPI-U, as set forth in Section 3.4.1 and 3.4.3. Notwithstanding the foregoing, however, if any of the violations were unintentional and did not occur as the result of Lessee's negligence and if Lessee takes immediate action to cure the violation, then such violation shall not be counted against Lessee in calculating the twenty (20) repeat violations contemplated herein. Notwithstanding the foregoing, in calculating the 15 repeat violations described above, the cumulative total can be reduced by Lessee demonstrating to the Port that any single previously counted violation has been corrected and no violation of a similar nature has recurred during the twenty four (24) month period immediately following the counted violation. Such demonstration can be made by Lessee stating to the Port, in writing, that no such recurrence has occurred, and neither the Port nor any regulatory agency has otherwise observed such a recurrence within the twenty-four (24) month period.

10.3 Emergency Relief. If any noncompliance of this Lease threatens to cause serious harm to the Port or other Port tenants or persons, then the Port shall still be required to give any notice required to be given pursuant to this Section 10 but the Port shall also be entitled to seek immediate injunctive relief, specific performance or relief from stay in any bankruptcy

proceeding before the expiration date of any of the notice periods required by this Section 10 has passed. If any of these emergency remedies are granted to the Port, Lessee shall still be entitled to cure any violation of this Lease within the time periods set forth in this Section 10 before an Event of Default may be declared.

10.4 Remedies on Default. Immediately following an Event of Default, the Port may, without further action, declare an Event of Default and take whatever action at law or in equity may appear necessary or desirable to collect any amounts then due and thereafter to become due hereunder or to enforce the observance or performance of any obligation, agreement or covenant of the Lessee under this Lease. The Port does agree that if identical remedies for any given Event of Default are available and are enforceable under this Lease and the Facilities Lease, then the Port will pursue the identical remedy. Remedies for an Event of Default include but are not limited to:

10.4.1 Termination of Lease. Upon the occurrence of an Event of a Default, the Port shall have the right to terminate this Lease and the Facilities Lease. Even if an Event of Default has occurred, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover all Rents as they become due. Acts of preservation or maintenance or efforts to relet the Property or the appointment of a receiver upon the initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's right to possession unless written notice of termination is given by the Port to Lessee. The Port does agree that if it terminates this Lease, it shall also terminate the Facilities Lease.

10.4.2 Re-entry and Reletting. Upon the occurrence of an Event of Default, the Port may, without termination of this Lease and the Facilities Lease, use reasonable efforts to sublease the Property for the account of Lessee, holding Lessee liable for the difference between the amounts payable by such sublessee and amounts due and payable by Lessee hereunder. The Port, at its option, may relet the whole or any part of the Property from time to time, either in the name of the Port or otherwise, to such tenants, for such terms ending before, on or after the Expiration Date of this Lease, at such rentals and upon such conditions (including concessions and free rent periods) as the Port, in its sole discretion, may determine to be appropriate. To the extent allowed under Oregon law, the Port shall not be liable for refusal to relet the Property, or, in the event of any such reletting, for failure to collect any rent due upon such reletting; and no such failure shall operate to relieve Lessee of any liability under this Lease or otherwise affect any such liability. The Port may make

JACOBBI\PBLKGLA.WP  
February 23, 1996

such physical changes to the Property, the Licensed Area and/or the Bond Financed Improvements as the Port, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. The Port, if under any statutory obligations to mitigate damages, shall not be required to attempt to relet the Property to a potential lessee with whom the Port has been negotiating a lease for other property owned by the Port or to whom the Port has shown other property owned by the Port. The Port shall be entitled to use its best efforts to lease such other Port property to such prospective tenant.

10.4.3 Rent Recovery. Whether or not the Port retakes possession or relets the Property and/or the Licensed Area, or exercises any other right or remedy hereunder, the Port shall have the right to recover unpaid Rents and all other damages caused by the Event of Default. "Damages" as used herein shall include, without limitation: All Rents otherwise owed under this Lease (subject only to Oregon laws concerning mitigation of damages); all legal expenses and other related costs incurred by the Port as a result of Lessee's Default; that portion of any leasing commission paid by the Port as a result of this Lease which can be attributed to the unexpired portion of this Lease; all costs incurred by the Port in restoring the Property and Licensed Area to good order and condition, or in remodeling, renovating or otherwise preparing the Property and the Licensed Area for reletting; and all costs incurred by the Port in subletting or reletting the Property and the Licensed Area, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the Default; any and all costs and expenses incurred in connection with a Default under the Ordinance and the Facilities Lease. If the Port is successful in subletting or re-letting the Property and Licensed Area, the Port will credit Lessee with the amount of any compensation (excluding dockage) it receives for use of the Land and the Licensed Area (but not any Improvements or Bond Financed Improvements) for the remaining term of the Lease, after all of the Port's costs and expenses for marketing, clean-up, and maintenance of the Property and Licensed Area, and all other reletting expenses and losses caused by the Default have been recovered. If the Port can find a tenant willing to lease the Land but not the Bond Financed Improvements, the Port shall be entitled to relet the Land only.

10.4.4 Recovery of Damages. The Port may sue periodically for Damages as they accrue without barring a later action for further Damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may, in one action, recover accrued Damages plus

Damages attributable to the remaining Lease Term, including all Rent due. Escalations in Rent shall continue to be calculated as set forth in Section 3, just as if this Lease were to remain in effect. If the Port has sublet or relet all or any part of the Property for all or any part of the period remaining on the Lease Term, this amount will be credited to Lessee, less all expenses incurred in subletting or reletting.

10.4.5 Acceleration of Bonds. In addition to the remedies set forth above and except as limited above, while any of the Bonds are Outstanding (as that term is defined in the Ordinance) and an Event of Default shall have happened and be continuing, the Port may terminate the Facilities Lease and accelerate payment of the Bonds in accordance with Section 8.2(d) of the Facilities Lease and Section 9.1 (e) or 9.1 (f) of the Ordinance.

10.4.6 No Remedy Exclusive. Except as expressly provided herein, no remedy herein conferred upon or reserved to the Port is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy herein or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof (unless expressly waived by the Port), but any such right or power may be exercised from time to time and as often as may be deemed expedient.

10.4.7 No Implied Waiver. In the event any agreement, covenant or condition contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

10.4.8 Reimbursement of Attorney's Fees. If an Event of Default shall occur under any of the provisions hereof and the Port shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Lessee contained herein, the Lessee will reimburse the Port for the reasonable fees and expenses of such attorneys and such other reasonable expenses so incurred, to the extent permitted by law. Notwithstanding the foregoing, Lessee may, without causing an Event of Default hereunder, prior to paying such fees and expenses, contest in good faith the reasonableness thereof.

10.5 Curing Lessee's Default. If Lessee shall Default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such Default, may (but shall not be obligated

JACOBBLKOLA.WP  
February 23, 1996

to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases, only if such Default continues after the expiration of the required notice period. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as Additional Rent, any reasonable amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee.

10.6 Default by Port. The Port shall be considered in violation of this Lease if it fails to perform or observe any term or condition of this Lease it is required to perform or observe. In the event of any such violation by the Port, Lessee shall give the Port written notice specifying such violation with particularity, and the Port shall have forty-five (45) days within which to cure any such violation, or if such violation cannot reasonably be cured within forty-five (45) days, the Port shall then have forty-five (45) days to commence cure and shall diligently prosecute cure to completion, provided, however, that this forty-five (45) day notice period shall not relieve the Port from a claim for damages suffered by Lessee if the Port fails to perform within the time frames allocated in Sections 1.3.2, 4.1.1, 5.3.1 and the various other sections of this Lease providing for the submissions to the Port of requests for consent or approval. Unless and until the Port fails to so cure as provided herein, Lessee shall not have any remedy or cause of action by reason thereof, except as set forth herein. However, if the Port fails to cure its violation or perform within the time period set forth above, the Port shall be deemed in default under this Lease and Lessee shall have available to it all remedies at law and in equity.

## SECTION 11      ASSIGNMENT, SUBLEASE, MORTGAGE AND TRANSFER

11.1 General Prohibition. This Lease is personal to Lessee. Therefore, no part of the Property, the Licensed Area nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Property or Licensed Area be conveyed or conferred on any third party by Lessee by any other means, except as allowed under this Lease, without the prior written consent of the Port. Except as provided in this Section 11.1 or in 11.2, Lessee may not assign this Lease or any interest therein, or sublet the Property, or any part thereof, or permit the use of the Property, the Bond Financed Improvements and/or Licensed Area by any party other than Lessee or hypothecate, mortgage, encumber or otherwise transfer or dispose of Lessee's interest in the Property and/or Licensed Area, either voluntarily or involuntarily, without the prior written consent of the Port. Whether or not to give consent shall be based solely on what is in the best interest of the Port at the time of

JACOB\BPBKOLA.WP  
February 23, 1996

such request, based on what the Port determines its best interests to be. In any case, the Port agrees that it will not unreasonably delay in determining whether or not to give its consent. If Lessee is a corporation or other entity, any change in ownership of the controlling interest in the stock of the corporation or controlling interest in such other entity, through sale, exchange, merger, consolidation or other transfer, shall be deemed an assignment of this Lease requiring the Port's consent.

11.2 Preapproved Assignment/Sublease. Provided that an Approval of Bond Counsel is provided (if any Bonds are still Outstanding) to the Port and the Trustee, the Port hereby consents to the acquisition by Hall-Buck of an additional ownership interest in Lessee so long as that percentage does not exceed twenty-five percent (25%). The Port also agrees, subject to receipt of Approval of Bond Counsel by the Port and the Trustee (if any Bonds are still Outstanding), and provided that the Canpotex guarantee referred to in Section 1.2 shall remain in full force and effect, that Lessee may assign this Lease (including through sale, exchange, merger, consolidation or other transfer) or sublease to Canpotex or to any subsidiary or affiliate corporation of Canpotex whose primary business is the handling, shipping and/or marketing of potash. In the case of such assignment or sublease, the Hall-Buck guarantee referred to in Section 1.2 would be released if Hall-Buck is not affiliated with such above described preapproved assignee or sublessee. The Port further agrees, subject to receipt of an Approval of Bond Counsel by the Port and the Trustee, that Lessee may assign or sublease this Lease to all of the then current members of Canpotex, as a group, and in that case the Hall-Buck and Canpotex guarantees referred to in Section 1.2 shall be released. Approval of Bond Counsel in any of the above cases will not be required if no Bonds are Outstanding. Any such assignment or sublease by Lessee shall not relieve Lessee of primary liability for all payments due under this Lease, the Ordinance and the Facilities Lease and of the performance of all other obligations required under this Lease, the Ordinance and the Facilities Lease. In addition, any assignee or sublessee shall assume, in writing, the obligations of Lessee under this Lease, the Ordinance, the Facilities Lease and the Construction Contract, if it is still in effect, to the extent of the interest assigned or subleased and Lessee shall promptly furnish or cause to be furnished to the Port and the Trustee a true and complete copy of all documents evidencing such assignment or sublease and assumption of obligations. Any such assignment or sublease or attempted assignment or sublease without the Port's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law.

11.3 Effect of Consent. If such consent is given by the Port to assign or sublease, no assignment or subletting by Lessee shall

JACOBBI\PBLKGLA.WP  
February 23, 1996

relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder unless a specific written release is given to Lessee by the Port. Any attempted assignment or sublease by Lessee in violation of the terms and covenants of this Lease shall be void. Any consent by the Port to a particular assignment or sublease shall not constitute the Port's consent to any other or subsequent assignment or sublease. If consent is granted, Lessee shall provide a copy of the signed assignment or sublease document to the Port promptly after execution. The sublease or assignment instrument shall contain a provision requiring that the subtenant or assignee perform and observe all terms and conditions of this Lease and shall provide that the Port have the right to enforce such terms and conditions directly against the assignee or subtenant. The Port reserves the right to charge Lessee a reasonable fee in order to cover its costs of reviewing any request to assign or sublease, whether or not such request is granted.

11.4 Transfer by the Port. The Port agrees that it shall not transfer its interest in the Property, the Licensed Area or in this Lease so long as the Bonds are Outstanding, except to another government agency or entity where such transfer is permitted by the Ordinance and Facilities Lease and will not adversely affect the tax exempt status of the Bonds. In the event of any transfer not restricted by the provisions of this Lease or the Ordinance or Facilities Lease, Lessee agrees to attorn to the Port's transferee and recognize the transferee as the new lessor under the Lease. Thereafter, upon notification to Lessee of the name and address of the Port's successor, Lessee shall look to the Port's successor for satisfaction of any obligations accruing from and after the date of the transfer, so long as the transferee has agreed with the Port to assume all obligations of the Port under this Lease. If the Port's successor refuses or is unable to perform, Lessee may then so notify the Port and then the Port shall be responsible to Lessee to ensure compliance with the terms of this Lease by its successor.

11.5 Estoppel Certificates. Lessee agrees to execute and deliver to Port, at any time within ten (10) days after written request, a statement certifying, among other things: (1) That this Lease is unmodified and is in full force and effect (or, if there have been modifications, stating the modifications); (2) the dates to which Rent has been paid; (3) to the best of Lessee's knowledge, whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (4) to the best of Lessee's knowledge, whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this

Section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and/or lenders with whom the Port may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within ten (10) days after the Port's written request therefor, Lessee shall be deemed to have given such statement, shall be deemed to have admitted the accuracy of any information contained in the request for such statement and the Port shall be deemed appointed Lessee's attorney in fact, with full authority to make such an estoppel certificate on Lessee's behalf. The Port agrees that it will supply similar information to Lessee's lenders, if requested to do so by Lessee.

## SECTION 12      EMINENT DOMAIN

12.1 General. In the event any public or private entity having the power of eminent domain exercises its right or power of eminent domain (hereinafter "Taking Entity"), the parties' rights and obligations shall be governed by the common law of the State of Oregon, the applicable Oregon statutes, this Lease and with respect to the Bond Financed Improvements, the Ordinance and the Facilities Lease. In the event of conflict between the statute, common law, and this Lease as to distribution of proceeds, this Lease, the Ordinance and the Facilities Lease shall prevail, to the extent permitted by law.

12.2 Definitions. As used in this Section 12, the following terms shall have the following meanings:

12.2.1 "Date of Taking" means the date on which the condemning authority takes actual physical possession or such earlier date as the condemning authority gives notice that it is deemed to have taken possession or is granted possession by a court.

12.2.2 "Partial Taking" means the taking of only a portion of the Property, the Licensed Area and/or Bond Financed Improvements which does not constitute a Total Taking.

12.2.3 "Total Taking" means the taking of the fee title by right of eminent domain or other authority of law, or a voluntary transfer under the threat of the exercise of the right of eminent domain or other authority, of so much of the Property, the Licensed Area and/or the Bond Financed Improvements as is necessary for Lessee's use and occupancy, that the Property, the Licensed Area and Bond Financed Improvements, after the taking, are no longer suitable for Lessee's intended use. Any taking of fifty percent (50%) or more of the area of the Property shall be conclusively deemed a Total Taking.

JACOB\B\BLKGLA.WP  
February 23, 1996

12.2.4 "Facilities Award" shall mean the total amount awarded to or received by the Port and/or Lessee as damages, compensation or otherwise, by reason of the taking of the Bond Financed Improvements, or any part thereof, as a result of or under written threat of condemnation or eminent domain. This term shall not include any amounts awarded as damages, compensation or otherwise, by reason of the taking, as a result of the taking or in anticipation of the exercise of the right of condemnation or eminent domain of any of the Land, the Port Improvements or the Lessee Improvements.

12.2.5 "Taking Award" shall mean any amounts awarded to or received by the Port and/or Lessee as damages, compensation for the Land, the Port Improvements, Lessee Improvements or other assets not included within the definition of the Facilities Award.

12.3 Total Taking. If a Total Taking occurs during the Lease Term, this Lease will terminate as of the Date of Taking.

12.4 Partial Taking. If a Partial Taking occurs during the Lease Term, this Lease will continue in full force and effect as to the remainder of the Property and the Licensed Area. The Minimum Basic Rent payable by Lessee for the balance of the Term will be reduced in the same proportion that the square footage area of the Property taken bears to the square footage area of the Property immediately prior to the Date of Taking. In the event of such continuation, Lessee shall make all necessary repairs or alterations to make the remaining Property and Licensed Area fully functional operation suited to conduct Lessee's business, as contemplated herein unless Lessee terminates this Lease as provided in Section 12.6.

12.5 Total Taking Facilities Award. In the event of a Total Taking, any Facilities Award shall be paid to the Trustee, in accordance with Section 4.8 of the Ordinance, for deposit into the Bond Fund to redeem Bonds unless, at the direction of the Lessee and with the consent of the Port, such Facilities Award is paid to the Trustee for deposit in the Construction Fund and requisitioned in accordance with the provisions of Section 3.9 of the Facilities Lease. The Trustee shall apply all or so much of the Facilities Award as shall be required, together with any other moneys then held under the Ordinance by the Trustee and available therefor, to redeem the Bonds in accordance with the Ordinance. Any excess amount of the Facilities Award not required for redemption of the Bonds shall be paid to the Port.

12.6 Partial Takings Facilities Award. In the event of a Partial Taking, any Facilities Award shall either be paid to the Trustee for deposit into the Construction Fund and requisitioned in accordance with the provisions of Section 3.9 of the Facilities

Lease, or at the option of Lessee if the Partial Taking makes continued operation of the Bulk Cargo Facility not economically feasible in the reasonable judgment of Lessee, or if the Port otherwise agrees, deposited into the Bond Fund to redeem Bonds in accordance with the Ordinance. If reconstruction is undertaken, Lessee shall promptly use its best efforts to commence and continuously perform the reconstruction and reequipping so that it is completed within a reasonable time. So long as any Bonds are Outstanding, as that term is defined under Section 1.1 of the Ordinance, all reconstruction and reequipping shall be done in accordance with Section 3.1 of the Facilities Lease. In the event that no Bonds are Outstanding, all reconstruction and reequipping shall be done in accordance with this Lease. In the event that there is a Partial Taking where reconstruction and operation of the Bulk Cargo Facilities is economically feasible in the reasonable judgment of Lessee but the Facilities Award is not sufficient to pay the full costs of such reconstruction and re-equipping of the Bond Financed Improvements and all other Improvements, Lessee will nonetheless complete all work and pay any additional costs needed to complete reconstruction and re-equipping. Lessee may request the Port to issue additional bonds to provide moneys to pay all or part of the costs of reconstruction and re-equipping, but the Port shall not be obligated to issue such additional bonds. In the event there is a Partial Taking and the Facilities Award exceeds the cost of reconstruction and re-equipping and no Bonds are Outstanding, the balance of such Facilities Award received by the Trustee remaining after paying the costs of such reconstruction and re-equipping shall be paid to the Port.

12.7 No Port or Trustee Liability. Lessee shall not, by reason of payment of any excess costs required under this Section 12, or by reason of any diminution of all or any part of the Property, the Licensed Area and the Bond Financed Improvements resulting from any taking thereof, be entitled to any reimbursement from the Trustee or the Port of any abatement or diminution of the rent payable pursuant to Section 4.1 or 4.2 of the Facilities Lease.

12.8 Use of Facilities Award. Lessee and the Port shall not use any portion of the Facilities Award received in any manner that, in the opinion of Bond Counsel, will impair the exclusion of interest on the Bonds from the gross income of the Registered Owners thereof for federal income tax purposes.

12.9 Taking Award Distribution. In addition to the Facilities Award which shall be distributed as set forth above, the Taking Award shall be distributed as follows:

(a) The award attributable to the taking of the Land and all Port Improvements shall be paid to the Port.

JACOB/PBLKGLA.WP  
February 23, 1996

(b) The award attributable to the taking of Lessee Improvements shall be paid to Lessee. However, if this Lease is to be terminated, then all Bonds and their associated costs and expenses must first be paid in full in connection with the termination of this Lease and the Facilities Lease.

(c) The award attributable to the taking of Lessee's leasehold rights, if any, shall be paid to Lessee.

12.10 Effect of Termination. If this Lease is terminated pursuant to this Section 12 due to a Taking, then all Rent and other amounts payable by Lessee under this Lease will be paid by Lessee up to the Date of the Taking, and any Rent and other amounts paid in advance and allocable to the period after the Date of the Taking will be repaid to Lessee by the Port so long as Lessee has not been reimbursed for any such amount by the Taking Entity.

### SECTION 13      GENERAL PROVISIONS

13.1 Covenants, Conditions, and Restrictions. This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now imposed upon the Property and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver confirming agreements of subordination in the form requested by the Port.

13.2 Governing Law. This Lease shall be governed and construed according to the laws of the State of Oregon without regard to its choice of law provisions. Venue shall be in Multnomah County, Oregon. All parties to this Lease hereby agree to submit to this jurisdiction.

13.3 No Benefit to Third Parties. The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Unless specifically provided otherwise in this Lease, nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

13.4 Port's Warranties. The Port makes the following warranties to Lessee which shall remain in full force and effect and shall survive for the duration of this Lease:

(a) That it has good and marketable title to the Property and the Licensed Area;

JACOBWPBLKGLA.WP  
February 23, 1996

(b) That the Port has the right to lease the Property to Lessee, and grant to Lessee the right to use of the Licensed Area, in accordance with all of the terms and conditions hereof;

(c) That none of the exceptions listed on the preliminary title report dated June 28, 1995 and issued by Chicago Title Insurance Company which by this reference is incorporated herein as if fully set forth (the "Title Report") will interfere with Lessee's use and occupancy of the Property and Licensed Area, as contemplated under the terms of this Lease; and

(d) That Lessee shall have ingress and egress to the Property and the Licensed Area through use of the existing "Port Owned Road" and "Common Area Road" shown on Exhibit "A" and identified as "Port Owned Road" and "Common Area Road".

Other than as stated herein, the Port makes no other warranties, express or implied. In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

13.5 Quiet Enjoyment. Subject to the terms and provisions of this Lease and subject to Lessee performing all of Lessee's obligations under this Lease, Lessee's possession of the Property and use of the Licensed Area shall not be disturbed by the Port.

13.6 Notices. All notices required or desired to be given under this Lease shall be given in writing and may be delivered by personal service or by placement in the United States or Canadian mail, postage prepaid, as certified or registered mail, return receipt requested, and addressed as follows:

To the Port:

The Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208-3529  
Attn: Marine Contracts Department  
Facsimile No. (503) 240-2009

with a copy to:

The Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208-3529  
Attn: Legal Department  
Facsimile No. (503) 731-7038

JACOBWPBLKGLA.WP  
February 23, 1996

and

To Lessee:

Portland Bulk Terminals, L.L.C.  
c/o James Larpenteur  
Schwabe, Williamson & Wyatt, P.C.  
1800 Pacwest Center  
1211 SW 5th Avenue  
Portland, OR 97204  
Facsimile No. (503) 796-2900

Hall-Buck Marine, Inc.  
7116 Highway 22  
P.O. Box 625  
Sorrento, LA 70778  
Attn: President  
Facsimile No. (503) 675-5923

with a copy to:

Canpotex Limited  
111 2nd Avenue South  
P.O. Box 1600  
Suite 400  
Saskatoon, Saskatchewan, Canada S7K 3R7  
Attention: Treasurer  
Facsimile No. (306) 653-5505

Any notice delivered by personal service shall be conclusively deemed received by the addressee upon delivery; any notice delivered by mail, as set forth herein, shall be conclusively deemed received by the addressee on the third business day after deposit in the mail. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision. In order for notice to be deemed effectively given to the Port by mail, notice must be sent to both Port addresses given above and in order for notice to be effective as to Lessee, a copy of the notice must also be sent to Canpotex at the address given above. Notices required under Sections 1.3.2 and 5.4 only may be sent by facsimile.

13.7 Time of the Essence. Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

13.8 Nonwaiver. Waiver by the Port or Lessee of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's or Lessee's right to require strict performance of the same provision in the future or of any other provision of this Lease.

JACOB\B\BLKGLA.WP  
February 23, 1996

13.9 Survival. Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by its terms is to survive the termination of this Lease, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter until the expiration of the applicable statute of limitations period(s). Notwithstanding the foregoing, however, if the Exit Audit finds that no Hazardous Substance contamination exists for which Lessee is responsible under this Lease or if the Port agrees in writing that all Hazardous Substance contamination which was the responsibility of Lessee has been fully remediated on the Property, then Lessee shall be released from any future claims for liability by the Port based on Hazardous Substances contamination of the Port's Property. After Lessee has completed all Hazardous Substance clean-up and remediation required by the Port pursuant to the terms of this Lease and the only ongoing remediation required on the Port Property is monitoring wells, as described in Section 9.5, Lessee shall remain responsible for clean-up until such time as the regulatory authority with jurisdiction over the monitoring wells agrees that the wells are no longer required. At that time, Lessee shall be deemed fully released from liability based on Hazardous Substance contamination of the Property.

13.10 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13.11 Ordinance Priority. If this Lease conflicts with the Ordinance, then that portion of this Lease shall be deemed invalid and unenforceable, but the remainder of this Lease shall remain valid and enforceable.

13.12 No Light or Air Easement. The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee. The Port reserves the right to construct overhead and underground conveyors, vehicle overpasses and tunnels over or under portions of Lessee's Property at some point in the future in order to facilitate development of the Port's other Rivergate property, so long as such activities do not unreasonably interfere with Lessee's use of the Property or result in additional expenses to Lessee.

13.13 Lease Subject to Bonds and Ordinances. This Lease is subject and subordinate to all of the provisions of the Bonds issued or to be issued in order to finance the Bond Financed

JACOBBL\FBLKGLA.WP  
February 23, 1996

Improvements, to all related Bond financing documents and the Facilities Lease which is incorporated by reference herein. This Lease is also subject and subordinate to all other bonds and ordinances which create liens and encumbrances as are now on the Land. Lessee agrees that the Port may hereafter adopt such bond ordinances which impose liens or encumbrances on said Land and the Port's interest in the leasehold, and that Lessee shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith. None of the above, however, shall significantly interfere with Lessee's use of the Property or the Licensed Area as contemplated herein.

13.14 Lease and Public Contract Laws. To the extent required by law, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein and shall control in the event of conflict with any provision of this Lease.

13.15 Limitation on Port Liability. Except as otherwise specifically provided in this Lease, the Port shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act of a third party, including other tenants. Unless liability is limited or expanded by another provision of this Lease, the Port shall be liable for its wilful misconduct or negligence but only to the extent of actual and not consequential damages.

13.16 Limitation on Lessee Liability. Except as otherwise specifically provided in this Lease, and specifically excluding any actions for damages that the Port could bring under Sections 6, 7 and 10, Lessee's liability shall otherwise be limited to actual and not consequential damages.

13.17 Calculation of Time. All periods of time referred to in this Lease shall include Saturdays, Sundays, and legal holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday. "Legal Holiday" shall mean any holiday observed by the United States Government.

13.18 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

13.19 Exhibits Incorporated by Reference. All Exhibits attached to this Lease are incorporated by reference herein for all purposes.

13.20 Modification. This Lease may not be modified except by a writing signed by the parties hereto.

13.21 Non-binding Mediation and Binding Arbitration. In the event of a dispute concerning any term or provision of this Lease, excepting disputes involving the payment of Rent or matters provided to be within the Port's discretion or sole discretion, the parties agree to submit the dispute to non-binding mediation to be conducted by a mediator mutually agreed upon between the Port and Lessee. If the Port and Lessee cannot agree on a mediator, then any Multnomah County Circuit Court judge may select one for them. Cost of the mediation shall be shared equally by the parties but each party will be responsible for its own attorney fees, if the parties choose to have attorneys represent them at the mediation. Disputes concerning use of the Security Deposit, set forth in Section 3.7 and selection of a replacement index for the CPI-U shall be subject to binding arbitration unless the parties mutually agree otherwise. Arbitration shall be conducted in Multnomah County, Oregon, pursuant to the Rules of the American Arbitration Association. The parties shall agree upon a single arbitrator or each may appoint one arbitrator and those two arbitrators shall appoint a third arbitrator; in that case, all three arbitrators shall arbitrate the dispute. All costs of the arbitration shall be paid by the losing party unless the arbitrators allocate costs of the arbitration between both parties. Aside from disputes concerning the Port's use of the Security Deposit and selection of a replacement for the CPI-U, no other disputes under this Lease shall be subject to binding arbitration unless the parties agree to submit to binding arbitration.

13.22 Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. The Port shall also be entitled to recover its attorney fees and costs if it is required to seek legal assistance to enforce any term of this Lease, whether or not a proceeding is initiated. Payment of all such fees and costs shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

13.23 Absence of Brokers. Lessee and the Port each represent to the other that they have not dealt with any leasing agent or broker in connection with this Lease.

13.24 Entire Agreement. This Lease, along with the Ordinance, the Facilities Lease, and the Construction Contract represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Property and use of the Licensed Area. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as expressly set forth in such documents. No claim for liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, any claimed breach of any representations or promises not expressly set forth in such documents. All prior oral agreements between the Port and Lessee are void and are expressly waived by Lessee and the Port.

13.25 Successors. The rights, liabilities and remedies provided for herein shall extend to the heirs, legal representatives, and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

13.26 Joint and Several Obligations. If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

13.27 Execution of Multiple Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

13.28 Defined Terms. Capitalized terms shall have the meanings given them in the text of this Lease. ("Defined Terms": see Table of Contents for a listing of Defined Terms.)

13.29 Interpretation. In this Lease (unless otherwise specified), the singular includes the plural and the plural the singular; words importing any gender include the other gender; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections or exhibits are to those of this Lease unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Lease; the phrase "and/or" shall be deemed to mean the words both preceding and following such phrase, or either of them; and references to the

parties include their respective permitted successors and assigns. This Lease has been thoroughly negotiated between the Port and Lessee. Therefore, there shall be no presumption that any ambiguity should be construed against the drafter.

13.30 No Limit on Port's Powers. Nothing in this Lease, including provisions concerning quiet enjoyment, shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

13.31 Warranty of Authority. The individuals executing this Lease warrant that they have full authority to enter into this Lease on behalf of the entity they represent.

13.32 Memorandum of Lease. The parties agree that either party may elect that a memorandum of this Lease, specifying only the parties to this Lease, the term of the Lease, the description of the Land, and the renewal and purchase options of Lessee, be executed and acknowledged by both parties and be recorded in the public records of Multnomah County, Oregon. The electing party shall pay the recording fee.

IN WITNESS HEREOF, the parties have subscribed their names hereto, effective as of the year and date first written above.

LESSEE:

PORTLAND BULK TERMINALS,  
L.L.C.

By: Re E. Shultz

As Its: PRESIDENT

APPROVED BY COMMISSION ON:

July 12, 1995

LESSOR:

THE PORT OF PORTLAND

By: Mike Thom

As Its Executive Director

APPROVED FOR LEGAL SUFFICIENCY

Barbara J. Smith  
Counsel for the Port of Portland

GUARANTOR ACKNOWLEDGMENT

The undersigned Guarantors hereby acknowledge receipt and review of this Ground Lease and all Exhibits thereto, including

JACOBBA/PBLKGLA.WP  
February 23, 1996

Guarantor's respective executed Guarantees, on this 14th day of March, 1996.

CANPOTEX LIMITED


HALL-BUCK MARINE, INC.

By: 

By: 

As Its: VICKI PARSONS, GENERAL  
COUNSEL AND COMPANYAL COUNSELOR

As Its: President

  
TREASURER

**EXHIBIT A TO UCC-1 FINANCING STATEMENT****PORTLAND BULK TERMINALS, L.L.C., DEBTOR****THE PORT OF PORTLAND, OREGON, SECURED PARTY****FIRST BANK NATIONAL ASSOCIATION, as Trustee, ASSIGNEE**

All of Debtor's right, title and interest in and to:

1. the Revenues (as defined in the Ordinance) (except moneys in the Rebate Account and money or securities held by the Trustee for purchase or payment of particular Bonds) held in trust in the Funds and accounts (as defined in the Ordinance) and pledged to First Bank National Association as trustee, and its successors in trust (the "Trustee") under The Port of Portland, Oregon's Ordinance No. 379-B enacted on June 14, 1995, as amended and supplemented by Ordinance No. 384-B enacted on January 10, 1996 and the Executive Director's Supplemental Action dated March 14, 1996 (collectively, the "Ordinance"), for the benefit of the holders of \$48,000,000 aggregate principal amount of The Port of Portland, Oregon Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C. Project) (the "Bonds") for the payment of the principal of, premium, if any, and interest on the Bonds in accordance with the terms and the provisions of the Ordinance.

2. the Facilities Lease (the "Lease") dated as of March 14, 1996, entered into by and between The Port of Portland, Oregon (the "Issuer") and Portland Bulk Terminals, L.L.C., a limited liability company organized under the laws of the State of Oregon (the "Company").

12/01/2004 13:49 FAX 206 344 4630  
03/14/98 THU 09:11 FAX 503 226 0079  
Submit this form and fee  
\$10.00 per form

US BANK CORP TRUST SVC

002

003

ATER WYNNE

STATE OF OREGON  
Corporation Division - UCC  
Public Service Building  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 886-2200 Facsimile (503) 373-1166

THIS SPACE FOR OFFICE USE ONLY

S92213

UCC-1

STATE FINANCING STATEMENT STANDARD FORM

PLEASE TYPE OR WRITE LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.

This Financing Statement is presented to filing officer pursuant to the Uniform Commercial Code. This financing statement remains effective for a period of five years from the date of filing, unless extended for additional periods as provided for by ORS Chapter 78. A carbon, photographic or other reproduction of this form, financing statement or security agreement may be filed as a financing statement under ORS Chapter 79.

A. DEBTOR NAME(S) (if individual list last name first)

1. Portland Bulk Terminals, L.L.C.  
2. \_\_\_\_\_  
3. \_\_\_\_\_

DEBTOR MAILING ADDRESS:

c/o James A. Larpenteur, Jr.  
Schwabe, Williamson & Wyatt, P.C.  
1211 S.W. Fifth Avenue, Suite 1800  
Portland, OR 97204-3785

F. LIST THE TYPES (OR ITEMS) OF COLLATERAL (ORS 78.4020).

Use a separate sheet of paper if necessary.

☐ PRODUCTS of collateral are also covered.

Certain revenues and rights under the Facilities Lease further described in Exhibit A attached hereto.

SEE ATTACHED

SEC OF STATE ORE.  
MAR 26 9 36 AM '98

B. SECURED PARTY(IES) NAME AND ADDRESS

The Port of Portland  
700 N.E. Multnomah, 13th Floor  
Portland, OR 97232

Contact Name: Barbara Jacobson, Esq. Phone No.: (503) 731-7036

C. ASSIGNEE(S) NAME AND ADDRESS (if any)

First Bank National Association, as Trustee  
1000 S.W. Broadway, Suite 1750  
Portland, OR 97205

Contact Name Cheryl Nelson Phone No.: (503) 220-0006

D. DEBTOR SIGNATURE(S) REQUIRED:

Portland Bulk Terminals, L.L.C.

By: Glen Shields By: \_\_\_\_\_  
Glen Shields, President

By: \_\_\_\_\_ By: \_\_\_\_\_

E. DEBTOR SIGNATURE(S) NOT REQUIRED. If applicable, check the appropriate box below to file without debtor signature(s). This statement is filed without the debtor signature(s) to perfect a security interest in collateral. Secured Party must sign, when Debtor signature(s) is not required. See instructions for further information.

- ☐ Collateral already subject to a security interest in another jurisdiction.  
☐ Which is proceeds of the described original collateral which was perfected.  
☐ Collateral as to which the filing has lapsed.  
☐ Collateral acquired after a change of name, identity or corporate structure of debtor.

By: \_\_\_\_\_

Secured Party signature

Secured Party signature

RETURN COPY TO: (name and address). Please do not type or print outside of bracketed area. OR, FAX COPY TO: (name and fax number).

Douglas E. Goe  
Ater Wynne Hewitt Dodson & Skeritt  
222 S.W. Columbia, Suite 1800  
Portland, OR 97201

Name: Douglas E. Goe

Fax Number: (503) 226-0079

FORM No. UCC-1  
Stevens-Nash Law Publishing Company  
Portland, OR 97204 - (503) 223-3157

UCC-1 (Rev. 7/93)

0000 0419 0936 0000

AMENDMENT NO. 1 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.

This AMENDMENT NO. 1 TO GROUND LEASE ("Amendment No. 1") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation which exports Potash from Canada to destinations outside of Canada and the United States ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease"); Lessee wishes to amend that Lease to allow for the handling of soda ash.

B. Section 1.3.1 of the Lease contemplates the addition of soda ash, subject to Port approval of handling procedures.

C. The Port will allow the handling of soda ash on a "direct hit basis", subject to the conditions as set forth in this Amendment.

NOW THEREFORE, the Port and Lessee agree as follows:

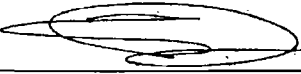
1. Section 1.3.1 labeled "Permitted Use" is hereby amended to add soda ash to the list of "Approved Products" which may be handled but not stored at the Facility. Lessee agrees that it will handle soda ash in accordance with the policies and procedures described in the letter to Padraic Quinn from Marie E. Krien-Schmidt dated July 2, 1997, which is attached hereto as Exhibit "A". Permission is not granted to handle petroleum coke at this time, but may be granted at a later date.

2. Except as specifically set forth herein, all other provisions of the Lease shall remain in full force and effect and this Amendment No. 1 shall be incorporated by reference, as if fully set forth therein. Unless specifically provided herein, capitalized terms used in this Amendment No. 1 shall have the same meaning given to them in the Lease.

This Amendment No. 1 is dated and is effective this 29<sup>th</sup> day of August, 1997.

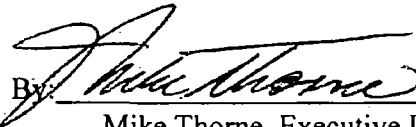
LESSEE

PORTLAND BULK TERMINALS, L.L.C.

By:   
Title: Steven Dechka, President

PORT

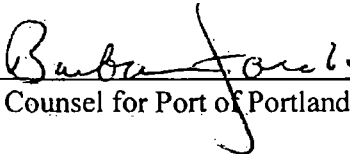
THE PORT OF PORTLAND

By:   
Mike Thorne, Executive Director

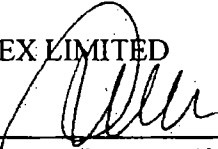
GUARANTOR ACKNOWLEDGMENT

The undersigned Guarantor hereby  
acknowledges review and approval of this  
Amendment No. 1 to the Ground Lease

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland

CANPOTEX LIMITED

By:   
Title: Ted J. Nieman, Vice President, General Counsel  
& Corporate Secretary

By:   
Title: Dwayne N. Dahl, Treasurer

AMENDMENT NO. 2 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.

This AMENDMENT NO. 2 TO GROUND LEASE ("Amendment No. 2") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation which exports Potash from Canada to destinations outside of Canada and the United States ("Canpotex").

RECITALS

A. The Port and Lessee entered into a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease") which was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997. Lessee wishes to amend that Lease to allow for the installation of an above-ground storage tank ("AST"), on the terms and conditions set forth herein.

B. Lessee wishes to obtain Port consent to install and operate an AST on the Property for the purpose of fueling equipment and vehicles during the Lease Term.

C. The Port will allow the installation of an AST, but conditions the installation and operation of an AST as set forth in this Amendment.

NOW THEREFORE, the Port and Lessee agree as follows:

1. Section 1.3.1 labeled "Permitted Use" prohibits the use of underground and above-ground fuel tanks on the Property. This Section 1.3.1 is hereby amended to allow the installation and operation of one (1) AST for non-leaded gasoline to be used for the purpose of fueling equipment on the Property. The conditions under which this AST is to be allowed is set forth in Exhibit "J", attached. The Port reserves the right to revoke Lessee's right to operate the AST and will require its removal if Lessee violates any of the imposed conditions set forth in Exhibit "J". Violation of any of those conditions shall constitute a failure subject to the default provisions of Section 10.1.2 or Section 10.1.3, as the case may be, under the Lease.

2. Except as specifically set forth herein, all other provisions of the Lease shall remain in full force and effect and this Amendment No. 1 shall be incorporated by reference, as if fully set forth therein. Unless specifically provided herein, capitalized terms used in this Amendment No. 1 shall have the same meaning given to them in the Lease.

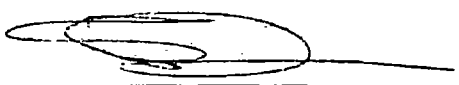
This Amendment No. 2 is dated and is effective this 23rd day of October 1997.


LESSEE

PORT


PORTLAND BULK TERMINALS, L.L.C.

THE PORT OF PORTLAND

By:   
Title: Steven Dechka, President

By:   
Mike Thorne, Executive Director

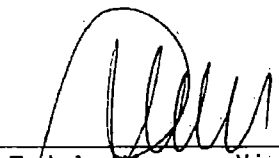
APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland

#### GUARANTOR ACKNOWLEDGMENT

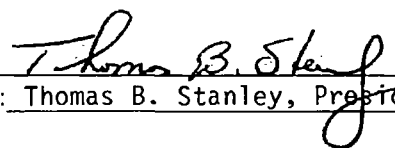
CANPOTEX LIMITED

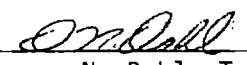
The undersigned Guarantor hereby  
acknowledges review and approval of this  
Amendment No. 2 to the Ground Lease

By:   
Title: Ted J. Nieman, Vice President,  
General Counsel & Corporate Secretary

HALL-BUCK MARINE, INC.

The undersigned Guarantor hereby  
acknowledges review and approval of this  
Amendment No. 2 to the Ground Lease and  
of Amendment No. 1 dated August 29, 1997

By:   
Title: Thomas B. Stanley, President

By:   
Title: Dwayne N. Dahl, Treasurer

AFTER RECORDING, RETURN TO:

James A. Larpenteur, Jr.  
Pacwest Center, Suite 1800  
1211 S.W. Fifth Avenue  
Portland, Oregon 97204

MEMORANDUM OF LEASES

THE PORT OF PORTLAND, a political subdivision of the State of Oregon ("Lessor"), and PORTLAND BULK TERMINALS, L.L.C., an Oregon limited liability company ("Lessee"), entered into a ground lease agreement ("Ground Lease") dated March 14, 1996, whereunder the Lessor leased the premises described on Exhibit A attached hereto ("Property") to the Lessee. The term of the Ground Lease commences March 14, 1996, and terminates June 30, 2027, unless renewed for an additional six year term in accordance with a renewal option granted to the Lessee. The terms and provisions of the Ground Lease are more particularly set forth in the Ground Lease, to which reference is here made for all purposes. The Ground Lease grants an option to Lessee to purchase the improvements on the Property at the expiration of the Ground Lease on the terms provided therein.

Further, the Lessor and the Lessee entered into a facilities lease agreement ("Facilities Lease") dated March 14, 1996, whereunder the Lessor leased certain bulk cargo facilities ("Facilities") on the Property to the Lessee. The term of the Facilities Lease commences March 14, 1996, and terminates October 1, 2025, unless otherwise extended or terminated in accordance with the Facilities Lease. Upon expiration of the Facilities Lease, the Facilities will continue to be leased by the Lessee from the Lessor under the terms of the Ground Lease. The terms and provisions of the Facilities Lease are more particularly set forth in the Facilities Lease, to which reference is here made for all purposes.

This Memorandum of Leases is being recorded in the Official Records of Multnomah County, Oregon, in order to give notice of the provisions of the Ground Lease and the Facilities Lease. This Memorandum of Leases shall not be deemed or construed to define, limit or modify the Ground Lease or the Facilities Lease, or any provision thereof, in any manner.

Executed as of the 13<sup>th</sup> day of October, 1997.

**LESSOR:** THE PORT OF PORTLAND,  
a political subdivision of the State of Oregon  
By: [Signature]  
Its: Executive Director

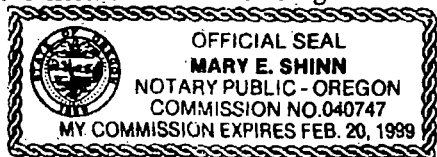
**LESSEE:** PORTLAND BULK TERMINALS, L.L.C.,  
an Oregon limited liability company  
  
By: Canpotex Shipping Services (U.S.) Limited,  
a Washington corporation  
Manager  
By: [Signature]  
Its: President

Exhibits:

A - Description of Premises

STATE OF OREGON           )  
  ) ss.  
County of Multnomah       )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of October, 1997, by Mike Thorne, Executive Director of The Port of Portland, on behalf of The Port of Portland, a political subdivision of the State of Oregon.



Mary E. Shinn  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 2-20-99

CANADA                               )  
PROVINCE OF SASKATCHEWAN       )  
  ) ss.  
To Wit                                       )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of October, 1997, by Steven Dechka, president of, and on behalf of, Canpotex Shipping Services (U.S.) Limited, a Washington corporation.

[Signature]  
NOTARY PUBLIC FOR SASKATCHEWAN  
BEING A SOLICITOR

EXHIBIT A

LEGAL DESCRIPTION PARCEL 1

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23 AND THE NORTH HALF OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID CORNER BEING NORTH 88°21' 11" WEST A DISTANCE OF 1805.57 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN; THENCE SOUTH 77°21'16" EAST A DISTANCE OF 206.92 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 34°11'31" EAST A DISTANCE OF 682.26 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 11°25'35", A DISTANCE OF 124.90 FEET TO A POINT THAT BEARS NORTH 39°54'22" EAST A DISTANCE OF 124.70 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 45°37'05" EAST A DISTANCE OF 578.08 FEET; THENCE ALONG THE ARC OF A 626.30 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 65°56'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 78°35'17" EAST A DISTANCE OF 681.66 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 68°26'36" EAST A DISTANCE OF 77.81 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 28°38'58", A DISTANCE OF 313.17 FEET TO A POINT THAT BEARS SOUTH 54°07'08" EAST A DISTANCE OF 309.92 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 39°47'29" EAST A DISTANCE OF 62.55 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 56°15'54", A DISTANCE OF 615.04 FEET TO A POINT THAT BEARS SOUTH 11°39'37" EAST A DISTANCE OF 590.62 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 16°28'20" WEST A DISTANCE OF 1078.81 FEET; THENCE SOUTH 22°50'16" WEST A DISTANCE OF 67.75 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 80°28'20", A DISTANCE OF 879.65 FEET TO A POINT THAT BEARS SOUTH 62°57'36" WEST A DISTANCE OF 809.12 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 76°48'14" WEST A DISTANCE OF 615.93 FEET; THENCE ALONG THE ARC OF A 626.30 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 110°59'49", A DISTANCE OF 1213.31 FEET TO A POINT THAT BEARS NORTH 21°18'22" WEST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM A PARCEL OF LAND DESCRIBED AS FOLLOWS;

COMMENCING AT THE TRUE POINT OF BEGINNING OF PARCEL 1, AS DESCRIBED ABOVE; THENCE ALONG THE ARC OF A 626.30 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 47°14'39", A DISTANCE OF 516.42 FEET TO A POINT ON A NONTANGENT CURVE THAT BEARS SOUTH 10°34'13" WEST A DISTANCE OF 501.92 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 76°48'14" EAST A DISTANCE OF 36.48 FEET TO THE TRUE POINT OF BEGINNING OF THE EXCEPTED PARCEL; THENCE CONTINUING SOUTH 76°48'14" EAST A DISTANCE OF 965.67 FEET;

THENCE NORTH 35°00'00" EAST A DISTANCE OF 899.03 FEET; THENCE NORTH 87°31'26" EAST A DISTANCE OF 189.01 FEET; THENCE SOUTH 55°00'00" EAST A DISTANCE OF 220.30 FEET; THENCE SOUTH 73°25'12" EAST A DISTANCE OF 49.75 FEET; THENCE SOUTH 6°17'56" WEST A DISTANCE OF 61.60 FEET; THENCE ALONG THE ARC OF A 871.95 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 3°41'05", A DISTANCE OF 56.08 FEET TO A POINT THAT BEARS SOUTH 8°16'23" WEST A DISTANCE OF 56.07 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 10°06'39" WEST A DISTANCE OF 72.62 FEET; THENCE SOUTH 16°28'22" WEST A DISTANCE OF 202.32 FEET; THENCE SOUTH 22°50'02" WEST A DISTANCE OF 231.49 FEET; THENCE ALONG THE ARC OF A 571.67 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 17°15'56", A DISTANCE OF 172.27 FEET TO A POINT THAT BEARS SOUTH 31°28'03" WEST A DISTANCE OF 171.62 FEET FROM THE LAST DESCRIBED POINT; THENCE ALONG THE RADIAL LINE OF THE AFORESAID CURVE SOUTH 49°54'13" EAST A DISTANCE OF 22.13 FEET; THENCE ALONG THE ARC OF A 593.80 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 63°05'50", A DISTANCE OF 653.92 FEET TO A POINT THAT BEARS SOUTH 71°38'53" WEST A DISTANCE OF 621.38 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 76°48'14" WEST A DISTANCE OF 612.72 FEET; THENCE ALONG THE ARC OF A 593.80 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 62°11'45", A DISTANCE OF 644.58 FEET TO A POINT THAT BEARS NORTH 45°42'23" WEST A DISTANCE OF 613.40 FEET FROM THE LAST DESCRIBED POINT TO THE TRUE POINT OF BEGINNING OF THE EXCEPTED PARCEL, PARCEL 1 CONTAINING 61.97 ACRES

#### LEGAL DESCRIPTION PARCEL 2

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID CORNER BEING NORTH 88°21'11" WEST A DISTANCE OF 1805.57 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN; THENCE NORTH 31°03'12" WEST A DISTANCE OF 57.68 FEET TO THE ORDINARY HIGH WATER LINE OF THE WILLAMETTE RIVER AS RECORDED ON RECORD OF SURVEY DRAWING NO. 54844 FILED JAN. 31, 1996 MULTNOMAH COUNTY SURVEY RECORDS ; THENCE ALONG SAID HIGH WATER LINE THE FOLLOWING COURSES; NORTH 42°30'19" EAST A DISTANCE OF 417.66 FEET; NORTH 52°00'42" EAST A DISTANCE OF 104.11 FEET; NORTH 44°03'34" EAST A DISTANCE OF 195.90 FEET; NORTH 5°59'27" EAST A DISTANCE OF 92.44 FEET; NORTH 78°03'08" EAST A DISTANCE OF 99.16 FEET; NORTH 39°00'29" EAST A DISTANCE OF 260.94 FEET; NORTH 18°13'16" EAST A DISTANCE OF 71.51 FEET; THENCE LEAVING SAID ORDINARY HIGH WATER LINE SOUTH 82°02'21" EAST A DISTANCE OF 157.62 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 43°46'39" EAST A DISTANCE OF 530.00 FEET; THENCE NORTH 49°40'35" EAST A DISTANCE OF 220.00 FEET; THENCE SOUTH 55°00'41" EAST A DISTANCE OF 45.00 FEET; THENCE SOUTH 38°10'51" EAST A DISTANCE OF 95.00 FEET; THENCE SOUTH 55°00'41" EAST A DISTANCE OF 326.60 FEET; THENCE NORTH 68°26'36" WEST A DISTANCE OF 63.52 FEET; THENCE ALONG THE ARC OF

A 658.80 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 65°56'21", A DISTANCE OF 758.18 FEET TO A POINT THAT BEARS SOUTH 78°35'17" WEST 717.03 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 45°37'05" WEST A DISTANCE OF 180.00 FEET; THENCE NORTH 44°22'55" WEST A DISTANCE OF 10.00 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 1.70 ACRES.

LEGAL DESCRIPTION PARCEL 3

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID CORNER BEING NORTH 88°21'11" WEST A DISTANCE OF 1805.57 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN; THENCE NORTH 31°03'12" WEST A DISTANCE OF 57.68 FEET TO THE ORDINARY HIGHWATER LINE OF THE WILLAMETTE RIVER AS RECORDED ON RECORD OF SURVEY DRAWING NO. 54844 FILED JAN. 31, 1996 MULTNOMAH COUNTY SURVEY RECORDS; THENCE ALONG SAID HIGH WATER LINE THE FOLLOWING COURSES; NORTH 42°30'19" EAST A DISTANCE OF 417.66 FEET; NORTH 52°00'42" EAST A DISTANCE OF 104.11 FEET; NORTH 44°03'34" EAST A DISTANCE OF 195.90 FEET; NORTH 5°59'27" EAST A DISTANCE OF 92.44 FEET; NORTH 78°03'08" EAST A DISTANCE OF 99.16 FEET; NORTH 39°00'29" EAST A DISTANCE OF 260.94 FEET; NORTH 18°13'16" EAST A DISTANCE OF 71.51 FEET; NORTH 46°26'17" EAST A DISTANCE OF 141.63 FEET; NORTH 51°46'50" EAST A DISTANCE OF 290.78 FEET; NORTH 47°23'50" EAST A DISTANCE OF 322.57 FEET; NORTH 29°22'58" EAST A DISTANCE OF 44.09 FEET; NORTH 53°52'35" EAST A DISTANCE OF 87.21 FEET; NORTH 64°31'24" EAST A DISTANCE OF 191.20 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE FOR THE PORTLAND BULK TERMINAL; THENCE SOUTH 39°42'09" EAST A DISTANCE OF 402.67 FEET ALONG SAID EASTERLY BOUNDARY LINE TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY BOUNDARY LINE SOUTH 39°42'09" EAST A DISTANCE OF 98.24 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY LINE SOUTH 34°59'19" WEST A DISTANCE OF 65.20 FEET; THENCE NORTH 55°00'41" WEST A DISTANCE OF 500.52 FEET; THENCE NORTH 49°40'35" EAST A DISTANCE OF 22.74 FEET; THENCE SOUTH 55°00'41" EAST A DISTANCE OF 400.00 FEET; THENCE NORTH 34°59'19" EAST A DISTANCE OF 69.14 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.35 ACRES.

LEGAL DESCRIPTION PARCEL 4

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE ONE-QUARTER CORNER COMMON TO SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN; THENCE NORTH 42°24'54" EAST A DISTANCE OF 996.09 FEET TO THE TRUE POINT

OF BEGINNING; THENCE SOUTH  $13^{\circ}47'24''$  WEST A DISTANCE OF 152.68 FEET; THENCE SOUTH  $30^{\circ}10'48''$  WEST A DISTANCE OF 244.75 FEET; THENCE NORTH  $69^{\circ}52'12''$  WEST A DISTANCE OF 50.79 FEET; THENCE ALONG THE ARC OF A NONTANGENT 658.81 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $24^{\circ}50'28''$ , A DISTANCE OF 285.63 FEET TO A POINT THAT BEARS NORTH  $1^{\circ}03'54''$  EAST A DISTANCE OF 283.40 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH  $67^{\circ}57'16''$  EAST A DISTANCE OF 181.64 FEET; THENCE SOUTH  $74^{\circ}42'09''$  EAST A DISTANCE OF 34.72 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.98 ACRES.

10-23-97  
9-2-286  
copy

**PORT OF PORTLAND  
ABOVE-GROUND PETROLEUM STORAGE  
TANK USE AGREEMENT**

This **ABOVE-GROUND PETROLEUM STORAGE TANK USE AGREEMENT** (the "Agreement"), is entered into effective as of October 23, 1997 (the "Effective Date"), between **THE PORT OF PORTLAND**, a port district of the State of Oregon (the "Port"), and **PORTLAND BULK TERMINALS, L.L.C.**, ("PBT") ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation which exports Potash from Canada to destinations outside of Canada and the United States ("Canpotex") (collectively referred to as the "Parties").

**RECITALS**

A. The Port and Lessee are parties to a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease"), by reference incorporated herein, pursuant to which Lessee has certain rights to use the real property that is the subject of the Lease (the "leased property"). That Lease was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997.

B. Lessee wishes to obtain Port consent to install and operate an above-ground petroleum storage tank ("AST") at the leased property and to operate the AST for the purposes of fueling equipment and vehicles during the term of the Lease.

C. The Parties understand that this Agreement is intended, in part, to protect the public health, safety, and welfare, the environment and the Port from the potential harmful effects of spills and releases from ASTs and to provide for indemnification of the Port should such spills and releases occur. ASTs containing fuel can, if not properly maintained, pose a significant risk to the public and the environment.

D. The Port wishes to condition the installation of the AST by Lessee at the leased property as set forth in this Agreement and by entering into this Agreement the Parties understand that this Agreement shall govern, except as set forth in the following two paragraphs of these Recitals, all aspects of the installation of, maintenance of, remediation for, use of and removal of the AST.

E. The Parties understand that this Agreement is not a substitute for, but an addition to, those requirements already imposed upon Lessee by applicable laws and regulations or that will subsequently become applicable to the below described ASTs. Nothing in this Agreement is intended to alter the existing obligation of Lessee to comply with all aspects of applicable environmental laws and regulations that otherwise govern the installation of, maintenance of, remediation for, use of and removal of the AST. In the event of a conflict, the applicable law shall govern except that where this Agreement imposes requirements upon Lessee that are more stringent than those imposed by current laws and regulations, this Agreement shall not be

regarded as in conflict with the law, and both the law and the requirements shall be complied with by the Lessee.

F. Nothing in this Agreement is intended to modify or abrogate any aspect of the Lease, and in the event of a conflict, the Lease shall govern.

## **AGREEMENT**

### **1. INSTALLATION OF AST**

#### **1.1 Consent to Installation**

By this Exhibit "J" the Port consents to the installation of an AST by Lessee at the leased property. The AST shall be installed at the location described and denoted on Appendix "1" (which by this reference is incorporated herein), and the AST shall be of a type, model, capacity and equipped as described in Appendix "2" (which by this reference is incorporated herein). Only those ASTs described in Appendix "2" may be installed and their installation shall be at only the location described and denoted on Appendix "1".

#### **1.2 Port not Responsible**

It is understood and agreed that by consenting to the installation of the AST the Port does not accept responsibility for the proper installation, maintenance or removal of the AST nor for any remediation, cleanup or corrective action resulting from contamination caused by the AST.

#### **1.3 Permits and Consents**

Lessee is responsible for obtaining all necessary permits or consents required by applicable law and regulation prior to the installation of the AST, and Lessee shall provide copies of all such permits and consents to the Port no less than twenty (20) days prior to the date upon which AST installation is intended to commence.

#### **1.4 Compliance with Laws**

Lessee is responsible for complying with all applicable laws, regulations and best management practices governing the installation of the AST in a manner and at the times required by those laws, regulations and best management practices. The AST shall, in addition to being that type, model, capacity and equipped as described in Appendix "1", be of the type, model, capacity and equipped as required by all applicable laws and regulations.

#### **1.5 Notice of Installation**

Written notice of the date upon and the time at which Lessee anticipates commencing installation of the AST and written notice of the identity of the entity and individual(s) who will be undertaking the installation shall be provided to the Port for the Port's review and approval as soon as practical to the date upon which installation is anticipated to commence. The Port shall give or deny approval of the date and time of commencing installation, shall notify Lessee who from the Port or the Port's contractors or consultants shall be present, and shall give or deny

approval of the entity and individual(s) who will be undertaking the installation by written response to Lessee within twenty (20) days of receipt of the notice from Lessee described in this paragraph.

#### **1.6 Design Requirements**

The design of any AST installed shall: (1) include double-wall steel tanks; (2) be designed to meet primary tank specifications as stated under Base Model Specifications; and (3) include a concrete base designed to support the tanks, and any spillage that may occur during transfer of fuel shall be directed to the adjacent oil water separator.

#### **1.7 Installer and Operator**

The AST shall be installed by properly trained, licensed and experienced personnel in accordance with all applicable laws, regulations and best management practices and subsequently operated by properly trained and experienced personnel in accordance with all applicable laws, regulations and best management practices.

#### **1.8 Port's Rights**

The Port shall by this Exhibit "J", in addition to those rights reserved to the Port pursuant to the Lease, have the right at any point during the installation of the AST to direct Lessee or its agents to cease installation if any of the following events occur:

##### **1.8.1 Installation Not in Accordance with Law or Best Management**

##### **Practices**

The Port determines, in its sole discretion, that the installation is not being undertaken in accordance with applicable laws and regulations, the terms of this Exhibit "J" or in accordance with best management practices that the Port may deem appropriate.

### **2. CLOSURE OF THE AST**

No less than thirty (30) days prior to the end of the Lease term, Lessee shall provide written confirmation that the AST has been removed and properly disposed of and the site appropriately closed all in accordance with all applicable laws and regulations and with appropriate regulatory approval. Copies of all closure records shall be kept or directed as required by applicable laws and regulations. Closure of the AST in place on the leased property is not an available option.

### **3. GENERAL OPERATING REQUIREMENTS**

#### **3.1 Compliance with Laws & Regulations**

Lessee shall comply with the Federal Oil Pollution Prevention regulations, 40 CFR 112; the Oregon Uniform Fire Code (Section 77); and any applicable Federal, State, and local government regulations. In addition, Lessee shall, in a manner consistent with the requirements of all applicable laws and regulations:

### **3.1.1 Operating Procedures for Fuel**

Develop and implement operating procedures for the proper receipt and storage of fuel, including the installation, maintenance, safety checks, and safety procedures applicable to fuel storage.

### **3.1.2 Spill Contingency Plan**

Develop and implement operating procedures for spill contingency and emergency response to fuel releases, including the designation of individuals responsible for directing the response and cleanup of such releases.

### **3.1.3 Notification of Spill**

Develop and implement operating procedures for the proper notification of suspected or confirmed releases of fuel to the appropriate regulatory agencies and the Port. Suspected or confirmed releases of fuel of one gallon or more shall be reported to the Port.

## **3.2 Copy Port**

Provide the Port with copies of all permits, approvals, reports, and correspondence with the Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), and the Oregon State Fire Marshall pertaining to the AST system.

## **4. RELEASE REPORTING, INVESTIGATION, CONFIRMATION, AND CLEANUP**

### **4.1 Compliance with Laws & Regulations**

Lessee shall comply with Oregon Administrative Rules 340-122-205 through 340-122-260 pertaining to the investigation and cleanup activities associated with the AST system permitted by this agreement. In addition, Lessee shall, in a manner consistent with the requirements of all applicable laws and regulations:

#### **4.1.1 Notify Port**

Within 24 hours of acquiring information or knowledge, notify the Port of any suspected or confirmed release from the AST system, including release to the Port's stormwater system.

#### **4.1.2 Implement Spill Plan**

Prepare and implement a spill plan for any release resulting from the receipt to and dispensing of fuel from the AST system.

#### **4.1.3 Spill Response Equipment**

Have on the Property, spill response equipment, including sufficient equipment to keep release from reaching the Port's stormwater system.

#### **4.1.4 Trained Personnel**

Have trained personnel to operate the spill release equipment.

### **5. GENERAL PROVISIONS**

#### **5.1 Notices**

##### **5.1.1 General**

Until hereafter changed by the Parties by notice in writing as provided herein, written notices shall be sent as stated in the Ground Lease, Section 13.6 Notices.

##### **5.1.2 Oral Notices**

All oral notices required or desired to be provided under this Exhibit "J" shall be given to the authorized representative of the party as follows:

To the Port:	Manager, Marine Environmental/Safety Affairs (503) 240-2014
To Lessee:	N.W. Regional Manager (Hall-Buck Marine, Inc. for PBT) (503) 285-4200 and/or Terminal Manager (Hall-Buck Marine, Inc. for PBT) (503) 285-4200

To be effective, all oral notices shall be followed up with a written notice sent within five (5) business days thereafter to the address set forth in Section 13.6 of the Ground Lease. The authorized representative of either party may be changed by such party giving notice to the other party as provided herein.

#### **5.2 Modification**

This Exhibit "J" may not be modified except in writing signed by the Parties hereto.

#### **5.3 No Limitation on Port's Rights**

Nothing in this Exhibit "J" shall limit in any way the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain and any rights and powers provided to the Port under the terms of the Ground Lease.

#### **5.4 General Indemnity**

Lessee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (a) any act, omission or negligence, associated with the AST, of Lessee or

Lessee's partners, officers, directors, agents, employees, invitees or contractors; (b) any use, occupation, management or control of the AST by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the leased property; (c) any condition created in or about the leased property or the Port's facility, associated with the AST, by any party, other than the Port or an agent of the Port, including any accident, injury or damage occurring on or about the leased property or the Port's facility; or (d) any breach, violation or nonperformance of any of Lessee's obligations under this Exhibit "J".

#### **5.5 Environmental Indemnity**

Without in any way limiting the generality of the foregoing General Indemnity, Lessee shall be solely responsible for and agrees to defend (using legal counsel acceptable to the Port), indemnify and hold harmless the Port from and against all environmental costs claimed against or assessed against the Port arising, in whole or in part, directly or indirectly, from acts or omissions of any person or entity, associated with the AST at or about the leased property or the Port's facility. This indemnification shall require Lessee to reimburse the Port for any diminution in value of the leased property, or the Port's facility or other adjacent or nearby Port property, caused by or associated with the AST, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the leased property, the Port's facility, or any other Port property, including damages arising from any adverse impact on marketing of space in or near the leased property or the Port's facility, including other Port property.

#### **5.6 Severability**

If any provision of this Exhibit "J" is deemed illegal or unenforceable, it is the intent of the Parties that this Exhibit "J" and all other provisions shall remain in full force and effect.

#### **5.7 Remedies on Default**

If Lessee fails to abide by the terms of this Exhibit "J", then the Port shall have all of the rights and remedies provided to it under the Lease, including a claim for reasonable attorney fees and costs, both at trial and on appeal.

#### **5.8 Parties**

The Port and Lessee are the only parties to this Exhibit "J" and as such are the only parties entitled to enforce its terms. Nothing in this Exhibit "J" gives or shall be construed to give or provide any benefit, direct or indirect, or otherwise to third parties unless third parties are expressly described as intended to be beneficiaries of its terms.

#### **5.9 Time is of the Essence; Waiver; Survival**

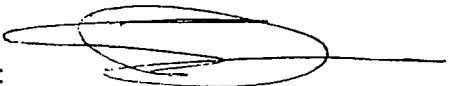
Time is of the essence in the performance of the obligations set forth herein. Failure to enforce any provision of this Exhibit "J" shall not constitute a waiver of that provision or the future prompt enforcement of that provision. All rights, obligations and representations shall survive termination of the Lease.

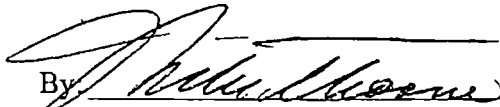
### 5.10 Ownership of AST; No Assignment

It is understood and agreed that at all times from installation of the AST to its proper removal and disposal, Lessee is the sole owner and operator of the AST. Lessee may not sell, assign or contract away either its owner or operator status or obligations under this Exhibit "J" or the applicable law and regulations without both the express written consent of the Port and the express written amendment of this Exhibit "J".

LESSEE  
PORTLAND BULK TERMINALS, L.L.C.

PORT  
THE PORT OF PORTLAND

By:   
Title: Steven Dechka, President

By:   
Title: Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

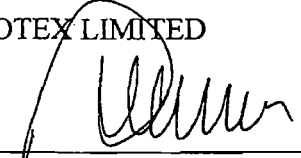
By:   
Title: Counsel for Port of Portland

### GUARANTOR ACKNOWLEDGMENT

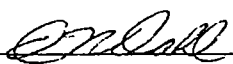
The undersigned Guarantors hereby acknowledge review and approval of this Above-Ground Petroleum Storage Tank Use Agreement.

CANPOTEX LIMITED

HALL-BUCK MARINE, INC.

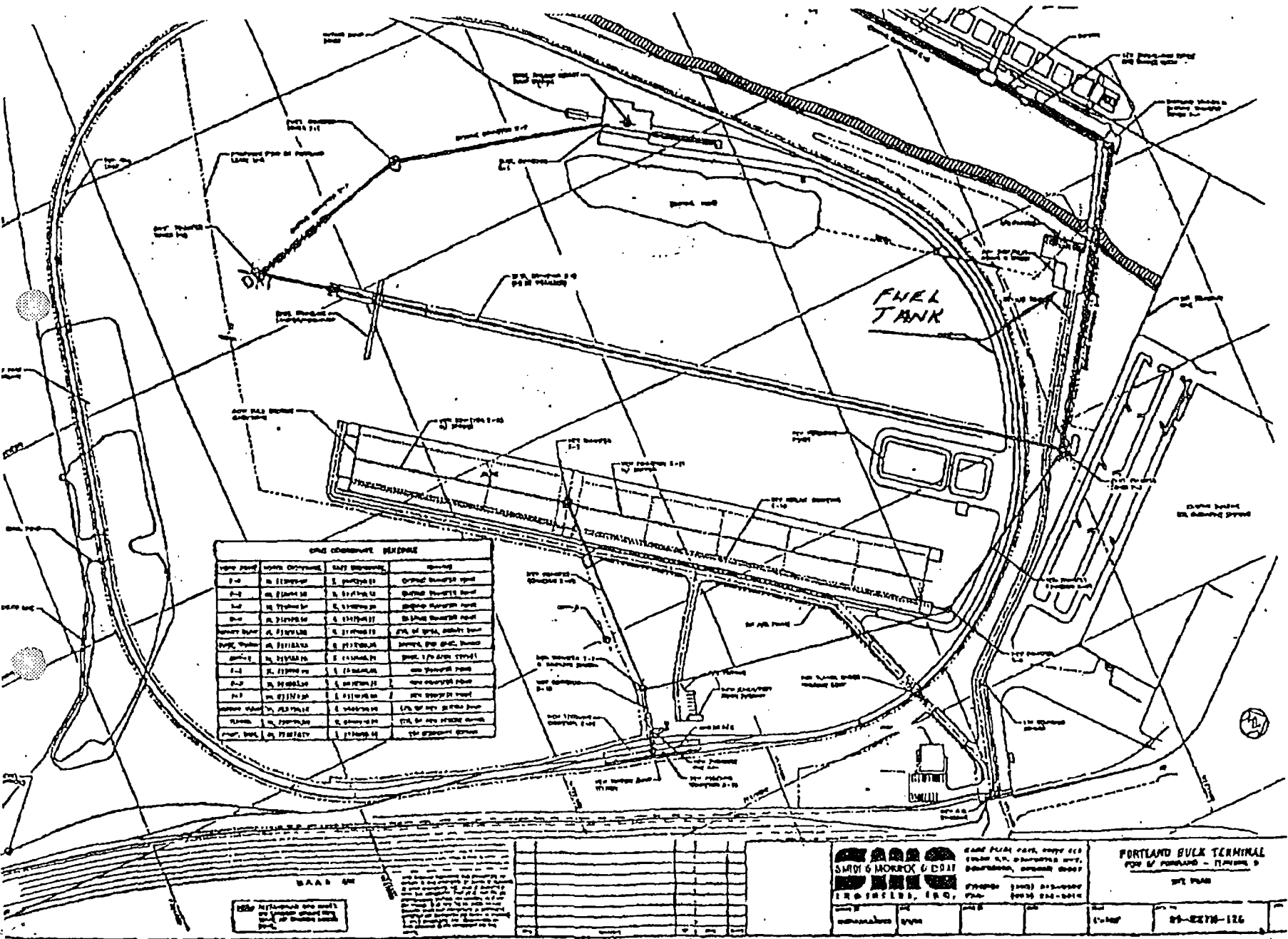
By:   
Title: Ted J. Nieman, Vice President,  
General Counsel & Corporate Secretary

By:   
Title: Thomas B. Stanley, President

By:   
Title: Dwayne N. Dahl, Treasurer

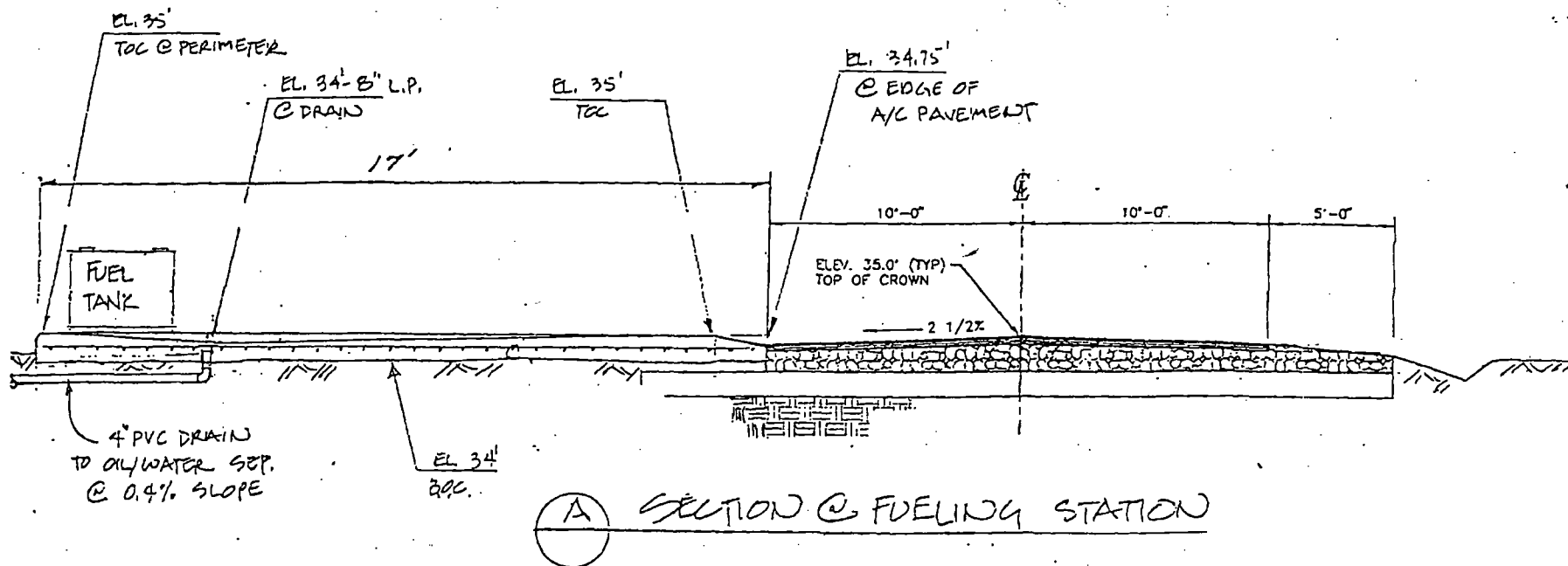
Appendix 1 to Exhibit J Page 1 of 4  
Portland Bulk Terminals  
1997 Above Ground Tank Use Agreement

**LOCATION OF UST**



JUL 21 '97 15:21 FR SCHMIDT WILLIAMS 503 795 2520 IN 7/31/97





Appendix 1 to Exhibit J Page 4 of 4  
Portland Bulk Terminals  
1997 Above Ground Tank Use Agreement

Appendix 2 to Exhibit J Page 1 of 4  
Portland Bulk Terminals  
1997 Above Ground Tank Use Agreement

**DESCRIPTION OF UST**

# ***Lube Cube brings the issue of safe storage to the surface.***



Now that most local regulators permit fuels, lubricating oil and used oil to be stored above ground, Lube Cube offers you the most economical and convenient alternative to underground storage tanks.

With Lube Cube, you don't have to invest time or money to install or replace an underground tank. This saves you not only the cost of the UST and installation, but also the liability insurance requirements. Our space-saving design also makes in-building installation easy when outside installation is not practical.

All Lube Cubes meet NFPA-30 for storage of flammable and combustible liquids and are manufactured, tested and labelled per U/L 142, as well as Underwriters' Laboratories of Canada.

Because of the double wall protection, Lube Cube double wall tanks require no dikes for spill protection. The interstitial space allows for convenient monitoring, if required.

Lube Cube double wall units are available

in standard sizes from 120 to 12,000 gallons. Custom sizes can also be fabricated. And our tanks are available nationwide!

Give us a call and let our staff of sales engineers help you select the tank best suited to your needs—or design a complete Lube Cube system for you. For more information, call 800 777-2823.



**Hoover Group, Inc.**  
CONTAINMENT SYSTEMS DIVISION

FEB-21-1997 18:48

PARSON OIL COMPANY

23 224 0508 P.03-04

# Hoover Group, Inc.

Containment Systems Division

PO Box 396  
Severna Park, MD 21146  
800-777-1823

## \* Double Wall Above Ground Tanks

Capacity (Gallons)	Dimensions (L x W x H)
120	2' 5" x 3' 1" x 3' 4"
280	5' 3" x 3' 1" x 3' 4"
480	7' 5" x 3' 11" x 3' 0"
500	5' 3" x 3' 3" x 5' 4"
650	7' 4" x 3' 0" x 5' 4"
1,000	10' 10" x 3' 0" x 5' 4"
1,500	15' 10" x 3' 0" x 5' 4"
2,000	18' 10" x 2' 10" x 6' 4"
2,000	18' 10" x 3' 4" x 5' 4"
3,000	20' 10" x 4' 4" x 5' 4"
4,000	21' 0" x 4' 10" x 5' 4"
5,000	24' 0" x 5' 4" x 6' 4"
6,000	28' 0" x 5' 4" x 6' 4"
8,000	30' 11" x 6' 4" x 6' 4"
10,000	25' 2" x 8' 4" x 7' 4"
12,000	30' 0" x 8' 4" x 7' 4"

Add 1-1/2" to Height (H) for skirts

## Also Available in Single Wall UL Listed (L x W x H)

2' 2" x 2' 6" x 3' 0"
5' 0" x 2' 5" x 3' 0"
7' 3" x 3' 4" x 2' 8"
5' 0" x 3' 8" x 5' 0"
8' 6" x 2' 8" x 5' 0"
10' 0" x 2' 8" x 5' 0"
15' 0" x 2' 8" x 5' 0"
18' 0" x 2' 6" x 5' 0"
18' 0" x 3' 0" x 5' 0"
20' 0" x 4' 0" x 5' 0"
20' 0" x 4' 6" x 5' 0"
23' 0" x 5' 0" x 6' 0"
26' 10" x 5' 0" x 6' 0"
29' 9" x 6' 0" x 6' 0"
24' 0" x 8' 0" x 7' 0"
28' 8" x 8' 0" x 7' 0"

Add 4" to Height (H) for skirts

## Standard Features

- Skid mounted to permit inspection
- Shop primed exterior
- Standard NPT fittings
- Openings:
  - Inner tank:
    - emergency vent
    - regular vent
    - gauge
    - fill
    - high level
  - Outer tank:
    - emergency vent
    - inspection
- Meets NFPA-30

## Options

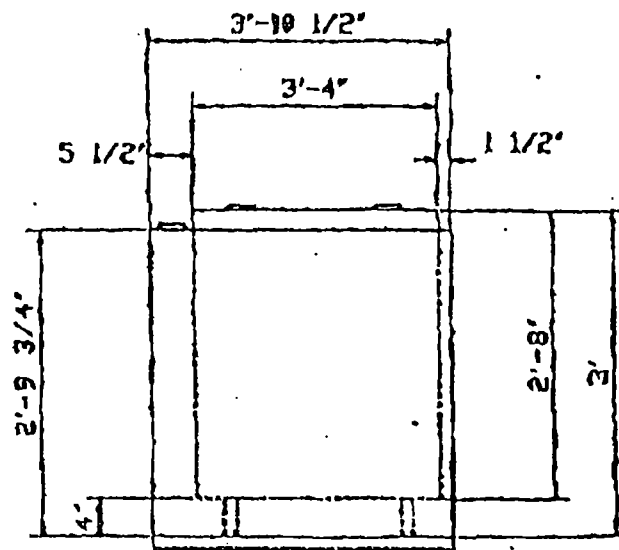
- Overspill box
- Custom sizes
- Stainless steel
- Interior and exterior coatings
- Equipment packages
- High level/seal monitoring equipment




Facilities  
located in: Indiana,  
Kansas, Maryland,  
Virginia, North Carolina and California.



504 422 BSG P. 84-284



 **HOVER**  
CONSISTENCY SYSTEMS INC.  
PO BOX 1000 160 CALIF AVE  
DOUBLE MOUNTAIN  
JMD 3-27-83 LCUW80

Appendix 2 to Exhibit J  
Portland Bulk Terminals  
1997 Above Ground Tank Use Agreement

\*\*\* TOTAL PAGE.09 \*\*\*

After recording return to:

James A. Larpenteur, Jr.  
Schwabe Williamson & Wyatt  
Pacwest Center, Suites 1600-1800  
1211 S.W. Fifth Avenue  
Portland, OR 97204-3795

*Candice Chance*

*PIU 10/29/01*

Send tax statements to:

Portland Bulk Terminals, L.L.C.  
15550 N. Lombard  
Portland, OR 97203  
Attention: Gerald R. Tincher, General Manager

**AMENDMENT TO  
MEMORANDUM OF LEASES  
AND  
EASEMENT AGREEMENT**

This Amendment is made effective as of the 9<sup>th</sup> day of September, 1999, by and between the Port of Portland, a Port district of the State of Oregon (the "Port"), and Portland Bulk Terminals, L.L.C., an Oregon limited liability company (the "Lessee"), organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and the Lessee have entered into a Ground Lease dated March 14, 1996, as amended by Amendment No. 1 dated August 29, 1997, Amendment No. 2 dated October 23, 1997, and Amendment No. 3 dated September 9, 1999 (collectively, the "Lease") for the purpose of facilitating the export of Potash and for other related purposes.

B. A Memorandum of Leases dated October 13, 1997 with respect to the Lease was recorded October 28, 1997 as Instrument No. 97166326, Records of Multnomah County, Oregon (the "Memorandum").

C. The Port and the Lessee desire to execute and record an Amendment to the Memorandum for the purpose of incorporating in recordable form the new Property description for the leased premises as set forth in Amendment No. 3, together with certain other provisions of the Lease.

D. The Port and the Lessee desire to provide for certain easements with respect to the Property as set forth below.

Recorded in the County of Multnomah, OR

C. Swick, Deputy Clerk

Total : 94.00

2001-172514 10/29/2001 03:57:53pm ATENE

D13	15	REC	SUR	DOR	OLIS	1999
		75.00	3.00	10.00	1.00	.00

15

## **1. PROPERTY DESCRIPTION**

Section 1.1 of the Lease is amended to substitute a new description of the Property. The new description is Parcels 1, 2, 3, 4, 5, 6, D, E, and F, as described in **Exhibit A1**, attached hereto and incorporated herein by this reference.

## **2. LICENCE FOR PREFERENTIAL USE OF BERTH 503**

Section 1.3.2 of the Lease provides that in conjunction with its use of the Property, the Lessee is also given a license for preferential use of the dock, wharf and apron located at Berth 503, Terminal 5 which is owned by the Port.

## **3. APPURTENANT RIGHTS**

Section 1.3.6 of the Lease provides that the Lessee shall have a nonexclusive right to use the Rivergate Common Areas in common with the Port and with other parties to whom the Port has granted or may grant such right. The term "Common Areas" means existing parking areas, roadways, sidewalks, driveways, surrounding landscaping and grounds, and any other areas now or hereafter designated as Common Areas by the Port within the Rivergate Industrial Park, to be used in common with other Rivergate tenants and others authorized to use these areas by the Port.

## **4. TERM**

Section 2 of the Lease provides that the initial term of the Ground Lease ("Initial Term") commenced on March 14, 1996. The Initial Term shall continue through June 30, 2027.

## **5. ACCESS EASEMENTS**

### **5.1 Lessee Easements**

The Port grants the Lessee two (2) exclusive easements, over and through a portion of the Property identified as Parcels E and F on pages 9 and 10, respectively, of the attached **Exhibit A1**, for the purposes of constructing, operating and maintaining a conveyor system (collectively, the "Lessee Easements"). The Lessee Easements commenced on March 14, 1996, and, unless the Lessee exercises its purchase rights described in Section 6 hereof, shall terminate upon the termination of the Lease. All permanent structures within the Lessee Easements shall be constructed above an elevation which is 23 feet above the rail elevation within the Lessee Easements.

### **5.2 Reservation of Port Easement**

The Port specifically reserves for itself, its successors and assigns, a non-exclusive perpetual easement and right-of-way for the purposes of ingress and egress upon, over and through a portion of the Property identified as Parcel D and more specifically described on page 8 of the attached **Exhibit A1** (the "Port Easement"). The Port, the Port's invitees, employees, agents and contractors shall have the perpetual right to the Port Easement area for ingress and egress on a regular, continuous basis. However, no rights hereunder shall lapse in the event of the Port's failure to use the Port Easement area on a continuous basis. This Port Easement shall be and hereby is made a part of each conveyance of all or any part of the Port Easement area and shall run with the land as to all property burdened by the Port Easement. The Port Easement may not be amended except by written agreement of all parties. No amendment shall be effective until duly recorded in the Deed Records of Multnomah County, Oregon.

**6. SURVIVAL**

The rights and easements described in Section 5.1 hereof run with the land and shall become permanent upon an exercise by the Lessee of its option to purchase the Lessee Improvements and the Bond Financed Improvements as provided for in Section 2.3 of the Lease.

**7. SUBJECT TO LEASE**

The terms of this Amendment are subject in their entirety to, and shall be controlled by, the terms and provisions of the Lease.

In witness whereof, the Port and the Lessee have subscribed their names hereto effective as of the date first above written..

LESSEE

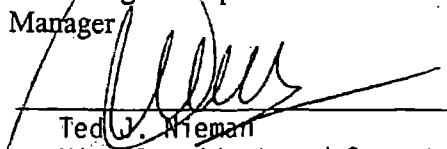
LESSOR

PORTLAND BULK TERMINALS, L.L.C., an  
Oregon limited liability company

THE PORT OF PORTLAND

By: Canpotex Shipping Services (U.S.) Limited,  
a Washington corporation  
Manager

By:   
Bill Wyatt, Executive Director

By:   
Ted J. Nieman  
Title: Vice President and Secretary

STATE OF OREGON )  
 )  
COUNTY OF MULTNOMAH )

This instrument was acknowledged before me on 15 October, 2001, by Bill Wyatt as Executive Director of the Port of Portland.



Catherine J. Calder  
Notary Public for Oregon  
My Commission Expires: 2-10-03

CANADA )  
PROVINCE OF SASKATCHEWAN )  
 ) ss.  
To Wit )


This instrument was acknowledged before me on September 11, 2001, by Ted J. Nieman, Vice President of, and on behalf of, Canpotex Shipping Services (U.S.) Limited, a Washington corporation.


Deborah Lee Storozuk  
D. Storozuk  
Notary Public for Saskatchewan  
My appointment expires May 31, 2005.  
~~Being a Solicitor~~

GUARANTOR ACKNOWLEDGMENT

The undersigned Guarantor hereby acknowledges review and approval of this Amendment to Memorandum of Leases.

CANPOTEX LIMITED

By:   
Title: ~~Vice President, General Counsel and Corporate Secretary~~ Senior Vice President and Chief Operating Officer

By:   
Title: ~~Corporate Treasurer and Director of Finance~~ Vice President, Finance and Information Systems

The undersigned Guarantor hereby acknowledges review and approval of this Amendment to Memorandum of Leases.

KINDER MORGAN BULK TERMINALS, INC.

By:   
Title: President

EXHIBIT A1

PARCEL 1 LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23 AND THE NORTH HALF OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID CORNER BEING NORTH 88°21'11" WEST A DISTANCE OF 1805.57 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN; THENCE SOUTH 88°21'11" EAST A DISTANCE OF 228.31 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 34°11'31" EAST A DISTANCE OF 635.42 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 11°25'35", A DISTANCE OF 124.91 FEET TO A POINT THAT BEARS NORTH 39°54'29" EAST A DISTANCE OF 124.70 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 45°37'05" EAST A DISTANCE OF 578.08 FEET; THENCE ALONG THE ARC OF A 626.30 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 65°56'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 78°35'16" EAST A DISTANCE OF 681.66 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 68°26'36" EAST A DISTANCE OF 77.81 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 28°38'58", A DISTANCE OF 313.17 FEET TO A POINT THAT BEARS SOUTH 54°07'07" EAST A DISTANCE OF 309.92 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 39°47'29" EAST A DISTANCE OF 62.55 FEET; THENCE ALONG THE ARC OF A 626.30 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 56°15'57", A DISTANCE OF 615.04 FEET TO A POINT THAT BEARS SOUTH 11°39'30" EAST A DISTANCE OF 590.62 FEET FROM THE LAST DESCRIBED POINT, SAID POINT HEREIN DESCRIBED AS POINT "B"; THENCE SOUTH 16°28'20" WEST A DISTANCE OF 1078.81 FEET; THENCE SOUTH 22°50'16" WEST A DISTANCE OF 67.75 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 80°28'22", A DISTANCE OF 879.66 FEET TO A POINT THAT BEARS SOUTH 62°57'36" WEST A DISTANCE OF 809.12 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 76°48'13" WEST A DISTANCE OF 615.93 FEET; THENCE ALONG THE ARC OF A 626.30 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 110°59'49", A DISTANCE OF 1213.31 FEET TO A POINT THAT BEARS NORTH 21°18'18" WEST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 34°11'31" EAST A DISTANCE OF 46.84 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM A PARCEL OF LAND DESCRIBED AS FOLLOWS:

COMMENCING AT THE TRUE POINT OF BEGINNING OF PARCEL 1 AS DESCRIBED ABOVE; THENCE SOUTH 48°24'31" EAST A DISTANCE OF 1146.27 FEET TO THE TRUE POINT OF BEGINNING OF THE EXCLUDED PORTION TO PARCEL 1; THENCE NORTH 35°00'00" EAST A DISTANCE OF 899.03 FEET; THENCE NORTH 87°31'26" EAST A DISTANCE OF 189.01 FEET; THENCE SOUTH 55°00'00" EAST A DISTANCE OF 220.30 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL D; THENCE SOUTH 73°25'14" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL D A DISTANCE OF 49.75 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF PARCEL D SOUTH 07°14'32" WEST A DISTANCE OF 117.66 FEET; THENCE SOUTH 10°06'39" WEST A DISTANCE OF 72.64 FEET; THENCE SOUTH 16°28'18" WEST A DISTANCE OF 202.24 FEET; THENCE SOUTH 22°50'02" WEST A DISTANCE OF 263.19 FEET; THENCE ALONG THE ARC OF A 593.81 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 13°47'19", A DISTANCE OF 142.90 FEET TO A POINT THAT BEARS SOUTH 29°43'26" WEST A DISTANCE OF 142.56 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 53°22'49" EAST A DISTANCE OF 15.72 FEET TO A POINT THAT IS 32.50 FEET NORTHERLY AND PARALLEL TO THE SOUTHERLY

EXHIBIT A1

LINE OF PARCEL 1; THENCE ALONG A LINE THAT IS 32.50 FEET NORTHERLY OF AND PARALLEL TO SAID SOUTHERLY LINE OF PARCEL 1 THE FOLLOWING THREE (3) COURSES; 1) THENCE ALONG THE ARC OF A 593.81 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 62°58'22", A DISTANCE OF 652.65 FEET TO A POINT THAT BEARS SOUTH 71°42'35" WEST A DISTANCE OF 620.29 FEET FROM THE LAST DESCRIBED POINT; 2) THENCE NORTH 76°48'13" WEST A DISTANCE OF 615.93 FEET; 3) THENCE ALONG THE ARC OF A 593.80 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 97°33'47", A DISTANCE OF 1011.12 FEET TO A POINT THAT BEARS NORTH 28°01'19" WEST A DISTANCE OF 893.32 FEET FROM THE LAST DESCRIBED POINT; THENCE LEAVING SAID PARALLEL, LINE SOUTH 48°20'11" EAST A DISTANCE OF 715.84 FEET; THENCE SOUTH 74°48'35" EAST A DISTANCE OF 400.00 FEET TO THE TRUE POINT OF BEGINNING OF THE EXCLUDED PORTION TO PARCEL 1, CONTAINING 24.01 ACRES MORE OR LESS, PARCEL 1 CONTAINS 59.30 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

EXHIBIT A1

LEGAL DESCRIPTION PARCEL 2

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID CORNER BEING NORTH 88°21'11" WEST A DISTANCE OF 1805.57 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN; THENCE NORTH 31°04'09" WEST A DISTANCE OF 57.73 FEET TO A POINT ON THE ORDINARY HIGH WATERLINE AS ESTABLISHED BY RECORDED PRIVATE SURVEY NUMBER, 54844 MULTNOMAH COUNTY SURVEY RECORDS; THENCE ALONG SAID ORDINARY HIGH WATERLINE THE FOLLOWING THIRTEEN (13) COURSES ; 1) THENCE NORTH 42°30'19" EAST A DISTANCE OF 417.66 FEET; 2) THENCE NORTH 52°00'42" EAST A DISTANCE OF 104.11 FEET; 3) THENCE NORTH 44°03'34" EAST A DISTANCE OF 195.90 FEET; 4) THENCE NORTH 05°59'27" EAST A DISTANCE OF 92.44 FEET; 5) THENCE NORTH 78°03'08" EAST A DISTANCE OF 99.16 FEET; 6) THENCE NORTH 39°00'29" EAST A DISTANCE OF 260.94 FEET; 7) THENCE NORTH 18°13'16" EAST A DISTANCE OF 71.51 FEET; 8) THENCE NORTH 46°26'17" EAST A DISTANCE OF 141.63 FEET; 9) THENCE NORTH 51°46'50" EAST A DISTANCE OF 290.78 FEET; 10) THENCE NORTH 47°23'50" EAST A DISTANCE OF 322.57 FEET; 11) THENCE NORTH 29°22'58" EAST A DISTANCE OF 44.09 FEET; 12) THENCE NORTH 53°52'35" EAST A DISTANCE OF 87.21 FEET; 13) THENCE NORTH 64°31'24" EAST A DISTANCE OF 191.20 FEET TO THE NORTHEASTERLY BOUNDARY LINE FOR THE BULK FACILITY AS PER SAID RECORDED SURVEY NUMBER 54844, SAID POINT HEREIN DESCRIBED AS POINT "A"; THENCE LEAVING SAID ORDINARY HIGH WATERLINE ALONG SAID NORTHEASTERLY BOUNDARY LINE SOUTH 39°42'09" EAST A DISTANCE OF 26.91 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 3; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 3 SOUTH 54°26'40" WEST A DISTANCE OF 198.84 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 3; THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 3 SOUTH 35°59'13" EAST A DISTANCE OF 22.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 58°12'16" W A DISTANCE OF 110.34 FEET; THENCE SOUTH 44°52'39" WEST A DISTANCE OF 59.20 FEET; THENCE SOUTH 28°46'51" EAST A DISTANCE OF 23.08 FEET, SAID POINT HEREIN DESCRIBED AS POINT "C"; THENCE NORTH 49°51'08" EAST A DISTANCE OF 99.81 FEET; THENCE NORTH 40°42'24" EAST A DISTANCE OF 73.82 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.07 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

EXHIBIT A1

LEGAL DESCRIPTION FOR PARCEL 3

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "A" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 2; THENCE SOUTH 39°42'09" EAST ALONG THE NORTHEASTERLY BOUNDARY LINE FOR THE TERMINAL 5 BULK FACILITY 26.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY LINE SOUTH 54°26'40" WEST A DISTANCE OF 198.84 FEET; THENCE SOUTH 55°29'35" EAST A DISTANCE OF 55.55 FEET; THENCE ALONG THE ARC OF A 251.20 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 13°21'56", A DISTANCE OF 58.60 FEET TO A POINT THAT BEARS SOUTH 48°48'37" EAST A DISTANCE OF 58.47 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 42°07'39" EAST A DISTANCE OF 51.87 FEET; THENCE SOUTH 54°12'06" EAST A DISTANCE OF 286.03 FEET; THENCE ALONG THE ARC OF A 359.78 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10°43'59", A DISTANCE OF 67.40 FEET TO A POINT THAT BEARS SOUTH 59°34'06" EAST A DISTANCE OF 67.30 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 64°56'05" EAST A DISTANCE OF 50.27 FEET; THENCE ALONG THE ARC OF A 461.82 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 25°01'49", A DISTANCE OF 201.75 FEET TO A POINT THAT BEARS SOUTH 52°25'11" EAST A DISTANCE OF 200.15 FEET; THENCE SOUTH 39°54'16" EAST A DISTANCE OF 175.91 FEET; THENCE SOUTH 37°51'53" EAST A DISTANCE OF 103.39 FEET; THENCE ALONG THE ARC OF A 108.94 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 36°39'03", A DISTANCE OF 69.69 FEET TO A POINT THAT BEARS SOUTH 56°11'24" EAST A DISTANCE OF 68.50 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 74°30'56" EAST A DISTANCE OF 225.33 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE FOR THE TERMINAL 5 BULK FACILITY; THENCE ALONG SAID EASTERLY BOUNDARY LINE NORTH 42°00'00" WEST A DISTANCE OF 25.15 FEET TO A POINT ON SAID NORTHEASTERLY BOUNDARY LINE; THENCE ALONG SAID NORTHEASTERLY BOUNDARY LINE THE FOLLOWING TWO (2) COURSES; 1) THENCE NORTH 74°42'09" WEST A DISTANCE OF 231.18 FEET; 2) THENCE NORTH 39°42'09" WEST A DISTANCE OF 1,044.99 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 1.98 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

EXHIBIT A1

LEGAL DESCRIPTION FOR PARCEL 4

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "B" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 1; THENCE SOUTH 73°31'40" EAST A DISTANCE OF 32.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE ARC OF A 658.80 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 56°15'59", A DISTANCE OF 646.97 FEET TO A POINT THAT BEARS NORTH 11°39'40" WEST A DISTANCE OF 621.28 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 50°12'25" EAST A DISTANCE OF 1.93 FEET; THENCE SOUTH 39°54'16" EAST A DISTANCE OF 52.29 FEET; THENCE SOUTH 37°51'53" EAST A DISTANCE OF 103.07 FEET; THENCE ALONG THE ARC OF 126.94 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 36°39'03", A DISTANCE OF 81.20 FEET TO A POINT THAT BEARS SOUTH 56°11'24" EAST A DISTANCE OF 79.82 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 74°30'56" EAST A DISTANCE OF 48.41 FEET; THENCE ALONG THE ARC OF A 135.32 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 41°43'31", A DISTANCE OF 98.55 FEET TO A POINT THAT BEARS SOUTH 53°39'10" EAST A DISTANCE OF 96.38 FEET FROM THE LAST DESCRIBED POINT; THENCE ALONG THE ARC OF A 171.75 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 64°55'40", A DISTANCE OF 194.63 FEET TO A POINT THAT BEARS SOUTH 00°19'35" EAST A DISTANCE OF 184.38 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 32°08'15" WEST A DISTANCE OF 143.15 FEET; THENCE ALONG THE ARC OF A 667.23 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 12°35'28", A DISTANCE OF 146.63 FEET TO A POINT THAT BEARS SOUTH 25°50'31" WEST A DISTANCE OF 146.33 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 19°32'47" WEST A DISTANCE OF 358.86 FEET; THENCE SOUTH 24°26'57" WEST A DISTANCE OF 49.69 FEET; THENCE ALONG THE ARC OF A 36.49 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 47°14'42", A DISTANCE OF 30.09 FEET TO A POINT THAT BEARS SOUTH 48°04'18" WEST A DISTANCE OF 29.24 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 16°28'20" EAST A DISTANCE OF 486.46 FEET TO THE PLACE OF BEGINNING, CONTAINING 1.70 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

**EXHIBIT A1**

**LEGAL DESCRIPTION FOR PARCEL 5**

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "C" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 2; THENCE SOUTH 14°39'02" EAST A DISTANCE OF 19.94 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 49°51'08" EAST A DISTANCE OF 109.04 FEET; THENCE NORTH 41°39'32" EAST A DISTANCE OF 81.31 FEET; THENCE SOUTH 55°29'35" EAST A DISTANCE OF 36.41 FEET; THENCE ALONG THE ARC OF A 233.20 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 13°21'56", A DISTANCE OF 54.40 FEET TO A POINT THAT BEARS SOUTH 48°48'37" EAST A DISTANCE OF 54.28 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 42°07'39" EAST A DISTANCE OF 53.78 FEET; THENCE SOUTH 54°12'06" EAST A DISTANCE OF 287.93 FEET; THENCE ALONG THE ARC OF A 676.80 FOOT NON-TANGENT CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 39°17'00", A DISTANCE OF 464.03 FEET TO A POINT THAT BEARS NORTH 85°00'31" WEST A DISTANCE OF 454.99 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 14°39'02" WEST A DISTANCE OF 97.20 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 1.08 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

**EXHIBIT A1**

**LEGAL DESCRIPTION FOR PARCEL 6**

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE TRUE POINT OF BEGINNING FOR PARCEL D AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL D; THENCE SOUTH 34°56'25" EAST A DISTANCE OF 41.58 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE ARC OF A 54.49 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 59°33'51", A DISTANCE OF 56.65 FEET TO A POINT THAT BEARS NORTH 54°13'57" EAST A DISTANCE OF 54.13 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 24°26'57" EAST A DISTANCE OF 50.48 FEET; THENCE NORTH 19°32'47" EAST A DISTANCE OF 359.61 FEET; THENCE ALONG THE ARC OF A 649.23 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 12°35'28", A DISTANCE OF 142.67 FEET TO A POINT THAT BEARS NORTH 25°50'31" EAST A DISTANCE OF 142.39 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 32°08'15" EAST A DISTANCE OF 143.15 FEET; THENCE ALONG THE ARC OF A 189.75 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 64°55'39", A DISTANCE OF 215.02 FEET TO A POINT THAT BEARS NORTH 00°19'34" WEST A DISTANCE OF 203.70 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 25°55'10" EAST A DISTANCE OF 19.51 FEET; THENCE SOUTH 75°36'33" EAST A DISTANCE OF 75.21 FEET; THENCE SOUTH 11°58'38" WEST A DISTANCE OF 140.42 FEET; THENCE SOUTH 22°19'01" WEST A DISTANCE OF 75.52 FEET; THENCE NORTH 67°54'48" WEST A DISTANCE OF 21.05 FEET; THENCE SOUTH 22°21'43" WEST A DISTANCE OF 762.99 FEET; THENCE SOUTH 21°45'43" WEST A DISTANCE OF 486.33 FEET; THENCE NORTH 16°28'20" EAST A DISTANCE OF 509.09 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.87 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

**EXHIBIT A1**

**LEGAL DESCRIPTION FOR PARCEL D**

AN EASEMENT RESERVED BY THE PORT TO BE USED FOR INGRESS AND EGRESS PURPOSES, LOCATED IN THE NORTH HALF OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "B" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 1; THENCE ALONG THE EASTERLY LINE OF PARCEL 1 SOUTH 16°28'20" WEST A DISTANCE OF 480.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY LINE OF PARCEL 1 SOUTH 16°28'20" WEST A DISTANCE OF 40.00 FEET; THENCE LEAVING SAID EASTERLY LINE OF PARCEL 1 NORTH 73°25'14" WEST A DISTANCE OF 116.17 FEET; THENCE NORTH 25°47'23" EAST A DISTANCE OF 40.52 FEET; THENCE SOUTH 73°25'14" EAST A DISTANCE OF 109.61 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.10 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

EXHIBIT A1

LEGAL DESCRIPTION FOR PARCEL E

AN EASEMENT FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A CONVEYOR SYSTEM, ALL PERMANENT STRUCTURES WITHIN THIS EASEMENT SHALL BE CONSTRUCTED ABOVE AN ELEVATION WHICH IS 23 FEET ABOVE THE RAIL ELEVATION WITHIN THE EASEMENT. A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "A" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 2; THENCE ALONG THE NORTHEASTERLY BOUNDARY LINE FOR THE TERMINAL 5 BULK FACILITY SOUTH 39°42'09" EAST A DISTANCE OF 26.91 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 3; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 3 SOUTH 54°26'40" WEST A DISTANCE OF 198.84 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 3; THENCE ALONG THE SOUTHWESTERLY BOUNDARY LINE OF SAID PARCEL 3 THE FOLLOWING SIX (6) COURSES; 1) THENCE SOUTH 55°29'35" EAST A DISTANCE OF 55.55 FEET; 2) THENCE ALONG THE ARC OF A 251.20 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 13°21'56", A DISTANCE OF 58.60 FEET TO A POINT THAT BEARS SOUTH 48°48'37" EAST A DISTANCE OF 58.47 FEET FROM THE LAST DESCRIBED POINT; 3) THENCE SOUTH 42°07'39" EAST A DISTANCE OF 51.87 FEET; 4) THENCE SOUTH 54°12'06" EAST A DISTANCE OF 286.03 FEET, SAID POINT HEREIN DESCRIBED AS POINT D; 5) THENCE ALONG THE ARC OF A 359.78 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10°43'59", A DISTANCE OF 67.40 FEET TO A POINT THAT BEARS SOUTH 59°34'06" EAST A DISTANCE OF 67.30 FEET FROM THE LAST DESCRIBED POINT; 6) THENCE SOUTH 64°56'05" EAST A DISTANCE OF 27.83 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHWESTERLY BOUNDARY LINE SOUTH 64°56'05" EAST A DISTANCE OF 22.44 FEET; THENCE ALONG THE ARC OF A 461.82 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 00°47'56", A DISTANCE OF 6.44 FEET TO A POINT THAT BEARS SOUTH 64°32'08" EAST A DISTANCE OF 6.44 FEET FROM THE LAST DESCRIBED POINT; THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY LINE SOUTH 23°59'02" EAST A DISTANCE OF 106.11 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF PARCEL 1; THENCE ALONG SAID NORTHERLY BOUNDARY LINE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02°49'00", A DISTANCE OF 30.79 FEET TO A POINT THAT BEARS NORTH 54°53'04" WEST A DISTANCE OF 30.79 FEET FROM THE LAST DESCRIBED POINT; THENCE LEAVING SAID NORTHERLY BOUNDARY LINE NORTH 25°43'21" WEST A DISTANCE OF 101.58 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.04 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

EXHIBIT A1

LEGAL DESCRIPTION FOR PARCEL F

AN EASEMENT FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A CONVEYOR SYSTEM, ALL PERMANENT STRUCTURES WITHIN THIS EASEMENT SHALL BE CONSTRUCTED ABOVE AN ELEVATION WHICH IS 23 FEET ABOVE THE RAIL ELEVATION WITHIN THE EASEMENT. A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "D" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL E; THENCE ALONG THE SOUTHWESTERLY BOUNDARY LINE OF PARCEL 3, ALONG THE ARC OF A 359.78 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°24'23", A DISTANCE OF 33.95 FEET TO A POINT THAT BEARS SOUTH 56°54'19" EAST A DISTANCE OF 33.94 FEET FROM THE LAST DESCRIBED POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHWESTERLY BOUNDARY LINE ALONG THE ARC OF 359.78 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 01°54'43", A DISTANCE OF 12.00 FEET TO A POINT THAT BEARS SOUTH 60°33'52" EAST A DISTANCE OF 12.00 FEET FROM THE LAST DESCRIBED POINT; THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY LINE SOUTH 29°24'17" WEST A DISTANCE OF 59.09 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF PARCEL 1; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 68°26'36" WEST A DISTANCE OF 21.04 FEET; THENCE LEAVING SAID NORTHERLY BOUNDARY LINE NORTH 37°31'03" EAST A DISTANCE OF 62.60 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 0.02 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

AMENDMENT NO. 3 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.

This AMENDMENT NO. 3 TO GROUND LEASE ("Amendment No. 3") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease") which was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997, and further amended by Amendment No. 2 to Ground Lease dated October 23, 1997. Lessee wishes to further amend the Lease to provide for the Port and Lessee entering into a Supplemental Facilities Lease pursuant to the Port issuing \$12,000,000.00 in Special Obligation Revenue Bonds, Series 1999.

B. The Port and Lessee further wish to amend the lease to amend Exhibit A, the description of the Land subject to the lease, and add certain provisions related to maintaining the Land and adjacent property at Terminal 5.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. SECTION 1.1 - AGREEMENT TO LEASE AND DESCRIPTION OF PROPERTY**

Section 1.1 is hereby amended by adding to the end of the Section the following sentence:

The Port and Lessee agree to amend the Property subject to the Lease by replacing Exhibit A and substituting the attached Exhibit A1.

**2. SECTION 1.1.1 - BOND FINANCED IMPROVEMENTS AND FACILITIES LEASE**

Section 1.1.1 is hereby amended by adding to the end of the Section the following sentence:

"Bond Financed Improvements" shall also include Improvements constructed by the Port using funds from Special Obligation Revenue Bonds, Series 1999, issued by the Port pursuant to Bond Ordinance 399-B and are covered by a Supplemental Facilities Lease.

**3. SECTION 1.2 - LEASE GUARANTEE**

Section 1.2 is amended to delete the references to Hall Buck Marine, Inc. as Guarantor and to substitute Kinder Morgan Bulk Terminals, Inc. as Guarantor.

**4. SECTION 4 - OTHER MAINTENANCE, DEVELOPMENT AND LANDSCAPING STANDARDS**

Section 4 is hereby amended to add the following new paragraphs 4.2.2.1, 4.2.2.2, and 4.2.2.3.

4.2.2.1 Lessee shall maintain the undeveloped areas of both the Premises and the adjacent Port property within the fence at Terminal 5 as necessary to control weeds and other vegetation. Maintenance shall include grading, seeding and mowing. Lessee's requirement to maintain the balance of any adjacent Port property at Terminal 5 shall be in effect so long as such land is not sold or leased to a third party.

4.2.2.2 The Port agrees to pay for one-half the cost of all maintenance provided by Lessee under Sections 4.2.2.1 and 4.2.2.2 within 30 days of receipt of invoice.

**5. SECTION 13.6 - NOTICES**

Section 13.6 is hereby amended by substituting for the addresses herein the following addresses:

To Lessee at:

Portland Bulk Terminal, L.L.C.  
15550 N. Lombard  
Portland, OR 97203  
Attn: Gerald R. Tincher, General Manager  
Facsimile No. (503) 285-7733

Kinder Morgan Bulk Terminals, Inc.  
7116 Highway 22  
P.O. Box 625  
Sorrento, LA 70778  
Attn: President  
Facsimile No. (504) 675-5923

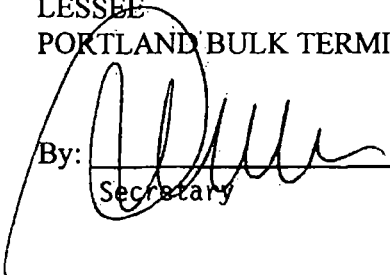
with a copy to:

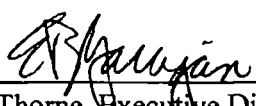
Canpotex Limited  
111 Second Avenue South  
Suite 400  
Saskatoon, Saskatchewan  
Canada S7K 3R7  
Attn: Vice President, General Counsel, and Corporate Secretary  
Facsimile No. (306) 653-5505

This Amendment No. 3 is dated and is effective this 9th day of September, 1999.

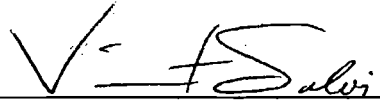
LESSEE  
PORTLAND BULK TERMINALS, L.L.C.

PORT  
THE PORT OF PORTLAND

By:   
Secretary

By:   
Mike Thorne, Executive Director

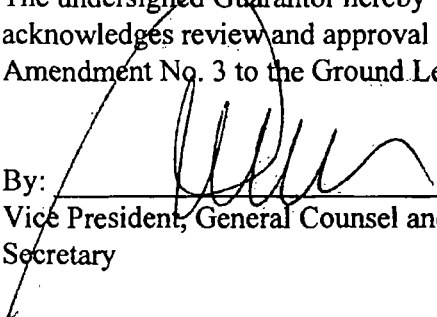
APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland

#### GUARANTOR ACKNOWLEDGMENT

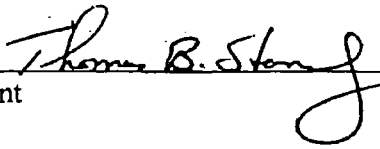
CANPOTEX LIMITED

The undersigned Guarantor hereby  
acknowledges review and approval of this  
Amendment No. 3 to the Ground Lease.

By:   
Vice President, General Counsel and Corporate  
Secretary

KINDER MORGAN BULK TERMINALS, INC.

The undersigned Guarantor hereby acknowledges  
review and approval of this Amendment No. 3 to the  
Ground Lease.

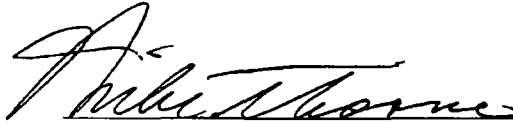
By:   
President

By:   
Corporate Treasurer and Director of Finance

**CERTIFICATE OF THE EXECUTIVE DIRECTOR,  
DESIGNATING RESPONSIBILITY FOR EXECUTION AND DELIVERY OF  
CERTAIN DOCUMENTS RELATING TO THE ISSUANCE AND SALE  
OF PORT OF PORTLAND SPECIAL OBLIGATION REVENUE BONDS,  
SERIES 1999 (PORTLAND BULK TERMINALS, L.L.C. PROJECT)**

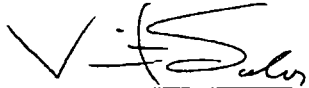
I, Mike Thorne, Executive Director of the Port of Portland, hereby designate E.B. Galligan, Senior Director/CFO, as my designee under Port of Portland Ordinance No. 379-B as amended by Ordinance No. 384-B and Ordinance No. 399-B (collectively, the "Ordinance") to take any action contemplated by the Ordinance and to execute and deliver any and all documents and certificates necessary or convenient to carry out the transactions contemplated by the Ordinance relating to the issuance and sale of the Port of Portland Special Obligation Revenue Bonds, Series 1999 (Portland Bulk Terminals, L.L.C. Project).

Dated this 16<sup>th</sup> day of December, 1999.



Mike Thorne, Executive Director  
Port of Portland

Approved as to Legal Sufficiency



Vincent Salvi, Assistant General Counsel

**UCC-1**

STATE OF OREGON  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 586-2200 Facsimile (503) 373-1166  
<http://www.sos.state.or.us/corporation/corphp.htm>

494010  
12/20/99 4:42:00 PM  
OR Sec. of State

**STATE FINANCING STATEMENT STANDARD FORM**

PLEASE TYPE OR PRINT LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.

This Financing Statement is presented as filing officer pursuant to the Uniform Commercial Code. This financing statement remains effective for a period of five years from the date of filing, unless extended for additional periods as provided for by ORS Chapter 73. A carbon, photograph, or other reproduction of this form, financing statement, or security agreement may be filed as a financing statement under ORS Chapter 73.

**A. DEBTOR NAME(S) (If individual, list last name first.)**

1. Portland Bulk Terminals, L.L.C.
2. \_\_\_\_\_
3. \_\_\_\_\_

**DEBTOR MAILING ADDRESS:**

15550 N. Lombard  
Portland, OR 97203

**F. DESCRIBE THE COLLATERAL (ORS 73.4020).**

☐ PRODUCTS of collateral are also covered.

Certain revenues and right under the Lease further described in Exhibit A attached hereto.

**B. SECURED PARTY(ES) NAME AND ADDRESS**

The Port of Portland  
121 N.W. Everett Street  
Portland, OR 97209

Contact Name: Vincent Salvat, Esq. Phone No.: (503) 944-7090

**C. ASSIGNEE(S) NAME AND ADDRESS (If any)**

U. S. Bank Trust National Association, as Trustee  
555 S.W. Oak Street, T-6  
Portland, OR 97205

Contact Name: Linda McConkey Phone No.: (503) 275-5659

**D. DEBTOR SIGNATURE(S) REQUIRED**

Portland Bulk Terminals, L.L.C.  
By: Ted J. Neuman, Secretary

**E. DEBTOR SIGNATURE(S) NOT REQUIRED . If applicable, check the appropriate box below to file without debtor signature(s). This statement is filed without the debtor signature(s) to perfect a security interest in collateral. Secured Party must sign, when debtor signature(s) is not required. See instructions for further information.**

- ☐ Collateral already subject to a security interest in another jurisdiction.  
☐ Which is proceeds of the described original collateral which was perfected.  
☐ Collateral as to which the filing has lapsed.  
☐ Collateral acquired after a change of name, identity, or corporate structure of debtor.

By: \_\_\_\_\_

Secured Party Signature

By: \_\_\_\_\_

Secured Party Signature

RETURN ACKNOWLEDGMENT LETTER TO: (include name, address, and identifier for the debtor listed above. Limit the identifier to eight characters. REFER TO INSTRUCTION, NUMBER 5.) Please do not type or print outside of bracketed area.

Douglas E. Goe, Esq.  
Ater Wynne LLP  
222 S.W. Columbia Street  
Suite 1800  
Portland, OR 97201

Fax Number: (503) 226-0079

**FEES**

Make check for \$18.00 payable to "Corporation Division."

NOTE: Filing fees may be paid with VISA or MasterCard. The card number and expiration date should be submitted on a separate sheet of paper for your protection.

DO NOT SUBMIT DUPLICATES OF THIS FILING AND/OR ATTACHMENTS.

**EXHIBIT A TO UCC-1 FINANCING STATEMENT**

**PORTLAND BULK TERMINALS, L.L.C., DEBTOR**

**THE PORT OF PORTLAND, OREGON, SECURED PARTY**

**U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE, ASSIGNEE**

All of Debtor's right, title and interest in and to:

1. the Revenues (as defined in the Ordinance) (except moneys in the Rebate Account and money or securities held by the Trustee for purchase or payment of particular Bonds) held in trust in the Funds and accounts (as defined in the Ordinance) and pledged to U.S. Bank Trust National Association as trustee, and its successors in trust (the "Trustee") under The Port of Portland, Oregon's Ordinance No. 379-B enacted on June 14, 1995, as amended and supplemented by Ordinance No. 384-B enacted on January 10, 1996, Ordinance No. 399-B enacted on September 9, 1999, and the Supplemental Action Certificates of the Executive Director's Designee, executed and delivered as of March 14, 1996 and December 16, 1999, respectively (collectively, the "Ordinance"), for the benefit of the holders of \$12,000,000 aggregate principal amount of The Port of Portland, Oregon Special Obligation Revenue Bonds, Series 1999 (Portland Bulk Terminals, L.L.C. Project) (the "Series 1999 Bonds") for the payment of the principal of, premium, if any, and interest on the Series 1999 Bonds in accordance with the terms and the provisions of the Ordinance, which Series 1999 Bonds have been issued as Additional Bonds under the Ordinance, on a parity basis with the Series 1996 Bonds, as defined in the Ordinance; and

2. the Facilities Lease dated as of March 14, 1996 (the "Facilities Lease") as supplemented by the Supplemental Facilities Lease dated as of December 16, 1999 (the "Supplemental Lease", together with the Facilities Lease, the "Lease"), entered into by and between The Port of Portland, Oregon (the "Port") and Portland Bulk Terminals, L.L.C., a limited liability company organized under the laws of the State of Oregon (the "Company").

OREGON SECRETARY OF STATE

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**UCC-3**

STATE OF OREGON  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 986-2200 Facsimile (503) 373-1166  
<http://www.sos.state.or.us/corporation/corphp.htm>

304184  
12/29/00 11:35:00 AM  
OR Sec. of State

**STATEMENT OF TERMINATION, CONTINUATION, ASSIGNMENT, RELEASE, AMENDMENT**

PLEASE TYPE OR PRINT LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.

This Financing Statement is presented to filing officer pursuant to the Uniform Commercial Code. This financing statement remains effective for a period of five years from the date of filing, unless extended for additional periods as provided for by ORS Chapter 79. A carbon, photographic, or other reproduction of this form, financing statement, or security agreement may be filed as a financing statement under ORS Chapter 79.

**A. THIS STATEMENT REFERS TO ORIGINAL FINANCING STATEMENT**No.: S92213 Date Filed: 3/26/96**B. TYPE OF AMENDMENT (CHECK ALL BOXES THAT APPLY).**

- ☐ **TERMINATION (NO FEE).** The Secured Party certifies that they no longer claim interest under the financing statement bearing the file number shown in SECTION A.
- ☒ **CONTINUATION.** Submitted within six months prior to expiration date.
- ☒ **ASSIGNMENT.** The Secured Party assigns to the Assignee whose name and address is shown in SECTION E and bearing the file number shown in SECTION A.  
Choose one: ☒ Full Assignment ☐ Partial Assignment
- ☐ **RELEASE. RELEASE DOES NOT TERMINATE DEBT.** From the collateral described in the financing statement bearing the file number shown in SECTION A, the Secured Party releases the following: (describe in SECTION G)  
Choose one: ☐ Release of all Collateral ☐ Partial Release
- ☐ **AMENDMENT.** Financing statement bearing file number shown in SECTION A is amended as described in SECTION G. Signature of Debtor required in most cases.

**G. AMENDMENT INFORMATION**

Use this area to list collateral to be Released, Amendment description, and other information.

**C. DEBTOR NAME(S)**1. Portland Bulk Terminals, L.L.C.

2. \_\_\_\_\_

3. \_\_\_\_\_

**DEBTOR MAILING ADDRESS:**

c/o James A. Carpentier, Jr./Schwabe, Williamson & Wyatt, P.C.  
1211 S.W. Fifth Avenue, Suite 1800  
Portland, OR 97204-3785

**D. SECURED PARTY(IES) NAME AND ADDRESS**

First Bank National Association, as Trustee  
1000 S.W. Broadway, Suite 1750  
Portland, OR 97205

Contact Name: Cheryl Nelson Phone No.: 503-220-0006**E. ASSIGNEE NAME AND ADDRESS (If any)**

U.S. Bank National Association  
1420 Fifth Avenue, 7th Floor  
Seattle, WA 98101

Contact Name: Jennifer Factor Phone No.: 206-344-4656**F. SIGNATURES.** In accordance with ORS Chapter 79, ALL SECURED PARTIES must sign UCC-3 Filings.

U.S. Bank National Association, formerly known  
as By: First Bank National Association, as  
Trustee

By: [Signature]  
Secured Party Signature

By: \_\_\_\_\_

By: \_\_\_\_\_

Debtor Signature(s) if required

**RETURN ACKNOWLEDGMENT LETTER TO:** (Include name, address, and identifier for the debtor listed above. You may include collateral identifier limited to eight characters. REFER TO INSTRUCTION, NUMBER 7.) Please do not type or print outside of bracketed areas.

Please return acknowledgement copy to: es  
UNISEARCH, INC.  
Ref: 11044-1  
PO BOX 12054  
SALEM OR 97309-0054

**FEES**

Make check for \$10.00 payable  
to "Corporation Division."  
No fee for Termination.

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The card number and expiration date should be submitted  
on a separate sheet of paper for your protection.

DO NOT SUBMIT DUPLICATES OF THIS FILING OR ITS ATTACHMENTS.

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Next Record >

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**AMENDMENT NO. 4 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.**

This AMENDMENT NO. 4 TO GROUND LEASE ("Amendment No. 4") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease") which was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997, further amended by Amendment No. 2 to Ground Lease dated October 23, 1997, and Amendment No. 3 to Ground Lease dated September 9, 1999.

B. The Port and Lessee further wish to amend the lease to delete Kinder Morgan Bulk Terminals, Inc. as a Guarantor.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. SECTION 1.2 - LEASE GUARANTEE**

Section 1.2 of the Lease was amended by Amendment No. 3 to delete Hall Buck Marine, Inc. as a guarantor and substitute Kinder Morgan Bulk Terminals, Inc. ("Kinder Morgan") in its place. Section 1.2 of the Lease is now further amended to delete Kinder Morgan, leaving Canpotex Ltd. as the remaining sole guarantor. Therefore, Section 1.2 of the Lease shall be replaced in its entirety with the following new Section 1.2:

"Performance by Lessee of all terms, conditions and obligations under this Lease is fully and unconditionally guaranteed by Canpotex ('Guarantor'). A copy of the Guarantee Agreement is attached hereto as **Exhibit C.**"

**2. CONDITIONS OF AND CONSENT TO RELEASE**

Lessee, Kinder Morgan and Canpotex have all mutually requested the release of Kinder Morgan and the Port has therefore agreed, by this Amendment, to do so. Canpotex, as the sole remaining "Guarantor," hereby unconditionally agrees to the full release of Kinder Morgan and, in consideration for the requested release, agrees that, as sole Guarantor, it shall remain fully and unconditionally liable under its Guarantee. Kinder Morgan hereby agrees that nothing contained herein shall release Kinder Morgan from its liability or responsibility to the Port under the Guarantee stemming from any default

or violation by Lessee that occurred prior to the date of this Amendment. It is further agreed by Canpotex that the Port shall have the right to elect not to seek any recovery for any such claim against Kinder Morgan, but may instead, at the Port's sole option, assert the full amount of the claim against Canpotex alone, and Canpotex agrees to be solely and fully responsible to the Port for the acts and obligations of Lessee.

This Amendment No. 4 is dated and is effective this 19 day of May, 2003.

LESSEE  
PORTLAND/BULK TERMINALS, L.L.C.

By: 

Print Name: Ted J. Nieman

As Its: Senior Vice President  
and Chief Operating Officer  
General Counsel and Secretary

PORT  
THE PORT OF PORTLAND

By:   
Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland

#### GUARANTOR ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

CANPOTEX LIMITED

The undersigned Guarantor hereby acknowledges review and approval of this Amendment No. 4 to the Ground Lease.

By: 

Print Name: Steven Dechka

As Its: President and Chief  
Executive Officer

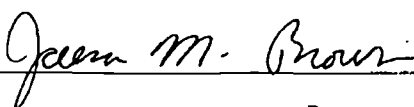
By: 

Print Name: Ted J. Nieman

As Its: Senior Vice President  
and Chief Operating Officer  
General Counsel and Secretary

KINDER MORGAN BULK TERMINALS, INC.

The undersigned Guarantor hereby acknowledges review and approval of this Amendment No. 4 to the Ground Lease.

By: 

Print Name: Jaeson M. Brown

As Its: President

**AMENDMENT NO. 5 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.**

This AMENDMENT NO. 5 TO GROUND LEASE ("Amendment No. 5") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease") which was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997, further amended by Amendment No. 2 to Ground Lease dated October 23, 1997, further amended by Amendment No. 3 to Ground Lease dated September 9, 1999, and further amended by Amendment No. 4 to Ground Lease dated May 19, 2003.

B. The Port and Lessee now wish to amend the Lease to modify the tiered volume rent structure.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. SECTION 3.2 – BASIC RENT AMOUNT**

Section 3.2 shall be deleted in its entirety and replaced by the following:

Basic Rent due hereunder shall be as follows:

Basic Rent charges to Lessee shall be based on the volume in metric tons (1 metric ton ("MT") = 2,204.6 pounds) of Approved Products processed through the Property or the Licensed Area. In no case, however, regardless of volume, shall Basic Rent ever be less than the Minimum Basic Rent of Seven Hundred Fifty Five Thousand Eight Hundred Ninety Two and 90/100 Dollars (\$755,892.90) per fiscal year (subject to CPI adjustment; see below). Basic Rent shall be charged as follows:

For the first 1,535,000 MT or less, Basic Rent shall be calculated at the rate of \$0.51/MT.

Thereafter, for all amounts over 1,535,000-MT, an additional amount shall be added at the rate of \$.42/MT.

All of the above Basic Rent rates and the Minimum Basic Rent shall be adjusted in accordance with Section 3.4.

**2. WARRANTY OF AUTHORITY**

The individual executing this Amendment No. 5 on behalf of Lessee represents and warrants that he is authorized by Lessee to do so.

**3. DEFINED TERMS**

All capitalized terms used but not otherwise defined in this Amendment No. 5 shall have the same meaning as in the Lease or any of the preceding amendments.

**4. EFFECT OF AMENDMENT**

Except as otherwise specified in this Amendment No. 5, all of the terms and conditions of the Lease, as previously amended, shall remain in full force and effect.

**5. ENTIRE AGREEMENT**

This Amendment No. 5 represents the entire agreement between the parties regarding the Lease, and supersedes all prior and contemporaneous discussions and agreements, written or oral regarding the same subject. No further amendment to the Lease shall be effective unless in writing and signed by the parties hereto. Both parties agree to be bound by the terms and conditions of this Amendment.

This Amendment No. 5 is dated and is effective this 1st day of July, 2004.

LESSEE  
PORTLAND BULK TERMINALS, L.L.C.

By: 

Print Name: STEVEN BERHKA

As Its: PRESIDENT AND  
CHIEF EXECUTIVE OFFICER.

PORT  
THE PORT OF PORTLAND

By:   
Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By:  2 Aug 04  
Counsel for Port of Portland

**CONSENT TO SALE OF BOND-FINANCED PROPERTY  
AND  
AGREEMENT FOR USE OF SALE PROCEEDS**

THIS CONSENT TO SALE OF BOND-FINANCED PROPERTY AND AGREEMENT FOR USE OF SALE PROCEEDS (the "Consent and Agreement") dated to be effective as of the 12th day of August, 2004, is between THE PORT OF PORTLAND, a political subdivision of the State of Oregon (the "Port"), PORTLAND BULK TERMINALS, L.L.C., an Oregon limited liability company (the "Company"), CANPOTEX LIMITED (the "Guarantor"), U.S. BANK TRUST NATIONAL ASSOCIATION, a national banking association (the "Trustee"), and the CANADIAN IMPERIAL BANK OF COMMERCE (the "Bank") (collectively, the "Parties").

**RECITALS**

A. WHEREAS, in accordance with the Oregon Revised Statutes Chapter 778, as amended (the "Act"), the Port issued its \$48,000,000 aggregate principal amount of its Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C. Project) on March 14, 1996 (the "Series 1996 Bonds"), and \$12,000,000 aggregate principal amount of its Special Obligation Revenue Bonds, Series 1999 (Portland Bulk Terminals, L.L.C. Project) on December 16, 1999 (the "Series 1999 Bonds" and, together with the Series 1996 Bonds, the "Bonds"); and

B. WHEREAS, the Port used proceeds of the Series 1996 Bonds to finance the construction of a bulk terminal facility, dock and wharf and other facilities functionally related and subordinate thereto (the "1996 Project"); and

C. WHEREAS, the 1996 Project and related facilities are leased by the Port to the Company, under the Facilities Lease, dated as of March 14, 1996, between the Port and the Company, as supplemented by the Supplemental Facilities Lease, dated as of December 16, 1999, by and between the Port and the Company (collectively, the "Facilities Lease"); and

D. WHEREAS, the land on which the 1996 Project is located is leased by the Port to the Company under a Ground Lease with the Company, dated March 14, 1996, as amended by Amendment No. 1 to the Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of August 29, 1997, by and between the Port and the Company, as further amended by Amendment No. 2 to the Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of October 23, 1997, by and between the Port and the Company, and as further amended by Amendment No. 3 to the Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of September 9, 1999, by and between the Port and the Company, including plot maps, as further amended by Amendment No. 4 to the Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of May 14, 2003; and as further amended by Amendment No. 5 dated as of July 1, 2004 (the Ground Lease as currently amended, and as it may hereafter be amended or restated from time to time, is hereinafter referred to as the "Ground Lease"); and

E. WHEREAS, the Port has determined that certain equipment financed with the proceeds of the Series 1996 Bonds is obsolete and no longer needed in the operation of the 1996 Project or has no utility other than as scrap material; which equipment is described in **Exhibit A** hereto (the "Surplus Property"); and

F. WHEREAS, the Company has requested that the Port sell the Surplus Property and that the proceeds be used to redeem or retire the Series 1996 Bonds or to pay other qualifying costs of the 1996 Project; and

G. WHEREAS, the sale or transfer of any bond-financed property, including but not limited to the Surplus Property, is governed by the terms of the Facilities Lease, which further incorporates by reference certain sections of the Ground Lease; and

H. WHEREAS, the Port determines that it is in the best interest of the Port to sell the Surplus Property and intends to sell the Surplus Property and, by this document, secures the consent to such sale by the Parties and agreement by the Parties regarding the use of proceeds from the sale of Surplus Property;

NOW, THEREFORE, the Parties hereto, intending to be legally bound hereby and for and in consideration of the premises and the mutual covenants herein contained, do hereby agree as follows:

## **AGREEMENT**

### **1. SALE OF SURPLUS PROPERTY**

The Parties consent to and agree to the sale by the Port of the Surplus Property. Such sale is to be made pursuant to a public bidding procedure to be performed by the Port in accordance with Oregon law and applicable Port policy.

### **2. USE OF PROCEEDS OF SALE**

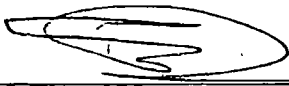
The net proceeds of the sale of the Surplus Property above are to be deposited into the Construction Fund established with and held by the Trustee pursuant to Section 4.2 of Ordinance No. 379-B of the Port enacted on June 14, 1995, as amended and supplemented by Ordinance No. 384-B of the Port enacted on January 10, 1996, and a Supplemental Action of the Designee of the Executive Director of the Port executed on March 14, 1996, as further amended and supplemented by Ordinance No. 399-B enacted on September 9, 1999, and a Supplemental Action of the Executive Director's Designee executed on December 16, 1999 (collectively, the "Ordinance").

### **3. REQUISITIONS**


The Port may requisition funds on deposit in the Construction Fund in accordance with procedures established under the Ordinance and the Facilities Lease. The proceeds of the sale of Surplus Property must be used to redeem or retire the Series 1996 Bonds or used within six months to acquire real or personal replacement property ("New Property"). Any New Property

IN WITNESS WHEREOF, the Port, the Company, the Guarantor, the Trustee and the Bank have caused this Consent and Agreement to be executed in the respective corporate names, all as of the date first written above.

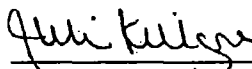
**PORTLAND BULK TERMINALS,  
L.L.C., as Lessee under the Ground Lease  
and the Facilities Lease**

  
By: Steven Dechka  
Its: President and Chief Executive Officer

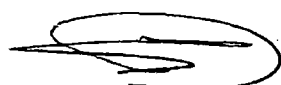
**THE PORT OF PORTLAND, as Issuer of the  
Bonds, and as Lessor under the Ground Lease  
and the Facilities Lease**

  
By: Carla L. Keller  
For Its: Executive Director

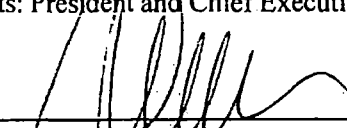
**APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT**

  
By: Juli Kilgore  
Its: Counsel for the Port

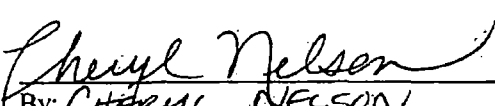
**CANPOTEX LIMITED, as Guarantor**

  
By: Steven Dechka  
Its: President and Chief Executive Officer

By:  
Its:

  
By: Ted J. Newman  
Its: Senior Vice President  
General Counsel and Secretary

**US BANK NATIONAL ASSOCIATION  
FKA U.S. BANK TRUST NATIONAL  
ASSOCIATION, as Bond Trustee**

  
By: CHERYL NELSON  
Its: VICE PRESIDENT

IN WITNESS WHEREOF, the Port, the Company, the Guarantor, the Trustee and the Bank have caused this Consent and Agreement to be executed in the respective corporate names, all as of the date first written above.

**PORTLAND BULK TERMINALS,  
L.L.C., as Lessee under the Ground Lease  
and the Facilities Lease**

**THE PORT OF PORTLAND, as Issuer of the  
Bonds, and as Lessor under the Ground Lease  
and the Facilities Lease**

By: Steven Dechka  
Its: President and Chief Executive Officer

By:  
Its:

**APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT**

By:  
Its: Counsel for the Port

**CANPOTEX LIMITED, as Guarantor**

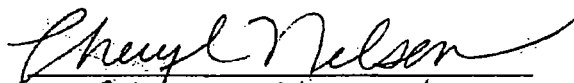
**CANADIAN IMPERIAL BANK OF  
COMMERCE, as Letter of Credit Bank**

By: Steven Dechka  
Its: President and Chief Executive Officer

By:   
Its: **KEVIN AUGUSTA**  
Director, Commercial Credit

By: Ted J. Nieman  
Its: Senior Vice President  
General Counsel and Secretary  
**U.S. BANK NATIONAL ASSOCIATION**  
**U.S. BANK TRUST NATIONAL**  
**ASSOCIATION, as Bond Trustee**

*FEA* **U.S. BANK NATIONAL ASSOCIATION**  
**U.S. BANK TRUST NATIONAL**  
**ASSOCIATION, as Bond Trustee**

  
By: **CHERYL NELSON**  
Its: **VICE PRESIDENT**

**EXHIBIT A**

**DESCRIPTION OF SURPLUS PROPERTY**

Car dumper and Related Equipment

Stacker/Reclaimer and Related Equipment

Shiploader and Related Equipment

Conveyor System

Coal Sampling System and Related Equipment

"Butler" Type Buildings

Miscellaneous Equipment

**SUPPLEMENTAL TAX CERTIFICATE  
AND  
REGULATORY AGREEMENT**

**\$48,000,000  
The Port of Portland  
Special Obligation Revenue Bonds  
Series 1996  
(Portland Bulk Terminals L.L.C. Project)**

In connection with sale of certain property originally financed with proceeds of the Port of Portland's \$48,000,000 Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals L.L.C. Project) (the "Bonds"), the Port of Portland (the "Port") and Portland Bulk Terminals L.L.C. (the "Company") hereby enter into this Supplemental Tax Certificate and Regulatory Agreement (the "Supplemental Tax Certificate") to the Tax Certificate and Regulatory Agreement by and between the Port and the Company, dated as of March 14, 1996 relating to the Bonds (the "Tax Certificate").

Recitals

WHEREAS, the Port issued the Bonds pursuant to Ordinance No. 379-B, enacted June 14, 1995 (the "1995 Ordinance") and Ordinance No. 384-B, enacted January 10, 1996 (the "1996 Ordinance") and the Supplemental Action Director Certificate of the Executive Director, dated March 14, 1996, for the purpose of financing construction and equipping of real property (the "Project") to be leased to the Company under a Facilities Lease by and between the Port and the Company, dated as of March 14, 1996 (the "Facilities Lease") and under a Ground Lease by and between the Port and the Company, effective March 14, 1996 (the "Ground Lease");

WHEREAS, the Company has requested the Port to sell (the "Sale") certain property included in the Project not needed for the purposes of the Project (the "Property"), and the Port is willing to sell the Property;

WHEREAS, Section 7.9 of the Facilities Lease provides that the Port, prior to selling any component of the Project, must obtain an opinion of Bond Counsel to the effect that (1) the sale of such property is authorized or permitted by the laws of the State of Oregon and the 1995 Ordinance and (2) the sale of such property will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds (the "Opinion of Counsel");

WHEREAS, Section 11.4 of the Ground Lease restricts transfers of any portion of the Project to a nongovernmental entity unless (1) such transfer is permitted by the 1995 Ordinance and the Facilities lease and (2) the sale of such property will not adversely

affect the exclusion from gross income for federal income tax purposes of interest on the Bonds;

WHEREAS, in Section 2.3(m) of the Facilities Lease, the Company has covenanted that it will not change the use of the Project in a manner that would jeopardize the exclusion of interest on the Bonds from gross income for federal income tax purposes; and

WHEREAS, the Port and the Company understand and acknowledge that the Opinion of Counsel to be rendered by Orrick, Herrington & Sutcliffe LLP is rendered in reliance upon the representations and covenants of the Port and the Company contained herein and assumed the Port's and the Company's continued compliance with the provisions of the Tax Certificate and this Supplemental Tax Certificate;

NOW THEREFORE, the Port and the Company hereby represent and covenant as follows:

**1. The Property.**

All of the Property constitutes personal property for federal tax purposes.

**2. The Sale.**

All Property to be sold will be sold exclusively for cash.

**3. Recordkeeping.**

The Port and the Company shall segregate all sale proceeds from the sale of the Property ("Disposition Proceeds") in a fund or account to be held by the Trustee for the Bonds separate from all other funds and accounts of the Port and the Company, and shall maintain records of all investments of such amounts and all expenditures of such amount until three years after the retirement or redemption of the last of the Bonds.

**4. Election regarding applicable Treasury Regulations.**

The Port hereby elects to apply the provisions of Regulations Section 1.142-2 to the Bonds.

**5. Use of Disposition Proceeds.**

(a) The Company reasonably expects and covenants that, within 6 months of the disposition of each item of Property, it will spend all Disposition Proceeds from the Sale of such item of Property on capital expenditures that constitute eligible costs of a dock and wharf facility within the meaning of Section 142(a)(2) of the Internal Revenue Code of 1986 (the "Code") (the "Replacement Property"). For this purpose, the date of disposition is the date on which the Property is removed from the Project site. In the event individual items of Property are removed from the site at different times, a separate 6 month period shall apply to each piece of Property.

(b) The Company and the Port shall maintain records of the date on which each item of Property is removed from the Project site.

(c) No property may be treated as Replacement Property if the payment for such property occurs prior August 13, 2004, which is the date on which the Request for Offers to Purchase was distributed to potential purchasers.

(d) All Replacement Property shall conform to the description of the Project as published in the TEFRA Notice described in Section 7(a) of the Tax Certificate.

(e) Replacement Property shall not have an average expected economic life less than the remaining expected economic life of the Property sold.

(f) As described in Section 7(f) of the Tax Certificate, no Replacement Property shall be acquired unless the first use of such Replacement Property is pursuant to such acquisition, i.e., no used or remanufactured property shall be acquired as Replacement Property; for this purpose, no Replacement Property shall be acquired from the Company.

(g) The Company hereby irrevocably elects not to claim depreciation, cost recovery or investment tax credits with respect to the Replacement Property.

(h) No property described in Section 7(l) of the Tax Certificate shall be acquired as Replacement Property.

**6. Consequences of failure to spend all Disposition Proceeds on Replacement Property.**

(a) In the event the Company and the Port fail to expend all Disposition Proceeds on Replacement Property within 6 months of the disposition of the Property as provided in Section 5 hereof, the Port and the Company understand that an amount of Bonds in excess of the amount of unspent Disposition Proceeds may have to be redeemed within 90 days of the expiration of such 6 month period. For this purpose, no transfer of Disposition Proceeds will be treated as an expenditure to the extent it gives rise to Investment-Type Property within the meaning of Treasury Regulations Section 1.148-1(e), and the date of each expenditure of Disposition Proceeds will be determined on a cash basis method.

(b) No later than two business days prior to the award of sale of any Property, the Company shall either (i) provide the Port with the written consent of the Canadian Imperial Bank of Commerce, New York Agency (the "Bank"), pursuant to Section 2.3(b) of the Letter of Credit Agreement, dated March 14, 1996 by and between the Company and the Bank (the "Credit Agreement"), to the optional redemption of the maximum amount of Bonds that would be required pursuant to the provisions of Section 6(a) hereof (the "Maximum Redemption Amount"), or (ii) deposit funds (the "Deposit") with the Trustee in an amount such that the Deposit plus the unspent Disposition Proceeds equal the Maximum Redemption Amount and constitute "Available Moneys" within the meaning of the 1995 Ordinance. The Port acknowledges and agrees that the written

consent from the Bank attached to this Supplement Tax Certificate satisfies the requirement of this Section 6(b).

(c) The Port covenants and agrees that, in the event the Company makes any Deposit pursuant to the provisions of Section 6(b)(ii) hereof and subsequently provides the Port with the written consent of the Bank described in Section 6(b)(i) hereof, the Company may withdraw any and all funds previously deposited pursuant to the provisions of Section 6(b)(ii) hereof provided that the Bank's consent is not conditioned upon retention of such funds by the Trustee.

(d) The Port and the Company have been advised by Bond Counsel that the Maximum Redemption Amount will be reduced as the Port and the Company expend the Disposition Proceeds on Replacement Property. The Port agrees that, in the event the Company makes any Deposit and the Maximum Redemption Amount subsequently is reduced, the Company may withdraw moneys previously deposited in an amount such that the remaining Deposit, together with the unspent Disposition Proceeds, equal the reduced Maximum Redemption Amount.

The Port covenants to seek the advice of Bond Counsel as to how many Bonds will have to be redeemed to preserve the tax-exempt status of the Bonds if less than all of the Disposition Proceeds are spent on Replacement Property within 6 months of the date of the Sale, as described in Section 5(a) hereof.

Date: Sept. 15, 2004

**THE PORT OF PORTLAND**

**APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT**

By: Julia Kelly  
Counsel for the Port of Portland

By: Lois Kelly for Bulkyatt

**PORTLAND BULK TERMINALS,  
L.L.C.**

By: [Signature]  
President and Chief Executive Officer



**CIBC**  
**Commercial Banking**  
*Partnering with Canada's Best™*

Canadian Imperial Bank of Commerce  
Winnipeg Commercial Banking Centre  
500 - One Lombard Place  
Winnipeg, MB  
R3C 2P3

August 17, 2004

Canpotex Limited  
P.O. Box 1600, Suite 400  
111-2<sup>nd</sup> Avenue South  
Saskatoon, Saskatchewan  
S7K 3R7

Attention: Dwayne Dahl

Dear Sir,

Re: Optional Redemption of The Port of Portland Special Obligation Revenue Bonds  
Series 1996 (Portland Bulk Terminals, L.L.C. Project)

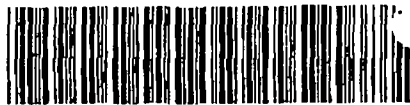
The Canadian Imperial Bank of Commerce, hereby provides its written confirmation that it consents, pursuant to Section 2.3(b) of the Letter of Credit Agreement, dated March 14, 1996 to the optional redemption of The Port of Portland Special Obligation Revenue Bonds Series 1996 (Portland Bulk Terminals, L.L.C. Project) to a maximum amount of USD\$5,000,000 within 480 days of August 31, 2004.

The consent for the optional redemption of the Portland Bulk Terminal ("PBT") project bonds is accorded to accommodate the sale of redundant assets.

Yours sincerely,

  
\_\_\_\_\_  
Bob Miles  
Director  
CIBC Commercial Banking

  
\_\_\_\_\_  
Brad Ganczar  
Associate  
CIBC Commercial Banking



9004428905

494010  
10/21/04 12:17:07 PM  
OR Sec. of State**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b>	
Julie Lam	213-615-6012
<b>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>	
Data Research, Inc. 8130 SW Beaverton-Hillsdale Hwy. Portland, OR 97225	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

<b>1a. INITIAL FINANCING STATEMENT FILE #</b> 494010 12/20/1999		<b>1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.</b> <input type="checkbox"/>	
<b>2. TERMINATION:</b> Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.			
<b>3. CONTINUATION:</b> Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.			
<b>4. ASSIGNMENT (full or partial):</b> Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.			
<b>5. AMENDMENT (PARTY INFORMATION):</b> This Amendment affects <input type="checkbox"/> Debtor <b>or</b> <input type="checkbox"/> Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7. <input type="checkbox"/> CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name and address of a party. <input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b. <input type="checkbox"/> ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g if applicable.			
<b>6. CURRENT RECORD INFORMATION:</b>			
6a. ORGANIZATION'S NAME			
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME SUFFIX
<b>7. CHANGED (NEW) OR ADDED INFORMATION:</b>			
7a. ORGANIZATION'S NAME			
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME SUFFIX
7c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
<b>7d. SEE INSTRUCTIONS</b>	<b>ADD'L INFO RE ORGANIZATION DEBTOR</b>	<b>7e. TYPE OF ORGANIZATION</b>	<b>7f. JURISDICTION OF ORGANIZATION</b>
7g. ORGANIZATIONAL ID #, if any			<input type="checkbox"/> NONE
<b>8. AMENDMENT (COLLATERAL CHANGE):</b> check only one box. Describe collateral <input type="checkbox"/> deleted or <input type="checkbox"/> added, or give entire <input type="checkbox"/> restated collateral description, or describe collateral <input type="checkbox"/> assigned.			

**9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

<b>9a. ORGANIZATION'S NAME</b> U.S. Bank National Association, as Trustee			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME SUFFIX

**10. OPTIONAL FILER REFERENCE DATA**

Filed with: OR - Secretary of State; Debtor: [Portland Bulk Terminals, L.L.C] A/C #97231560

F#106582  
A#185524

LO4940



9004445105

494010

10/20/04 11:38:34 AM

OR Sec. of State

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b>	
Julie Lam	213-615-6012
<b>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>	
Data Research, Inc. 8130 SW Beaverton-Hillsdale Hwy. Portland, OR 97225	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

<b>1a. INITIAL FINANCING STATEMENT FILE #</b> 494010 12/20/1999		<b>1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.</b> <input type="checkbox"/>	
<b>2. <input type="checkbox"/> TERMINATION:</b> Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.			
<b>3. <input type="checkbox"/> CONTINUATION:</b> Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.			
<b>4. <input type="checkbox"/> ASSIGNMENT (full or partial):</b> Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.			
<b>5. AMENDMENT (PARTY INFORMATION):</b> This Amendment affects <input type="checkbox"/> Debtor or <input checked="" type="checkbox"/> Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7. <input checked="" type="checkbox"/> CHANGE name and/or address: Please refer to the detailed instructions in regard to changing the name/address of a party. <input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b. <input type="checkbox"/> ADD name: Complete item 7a or 7b, and also item 7c; also complete item 7d (if applicable).			
<b>6. CURRENT RECORD INFORMATION:</b>			
<b>6a. ORGANIZATION'S NAME</b> U.S. Bank Trust National Association, as Trustee			
<b>OR 6b. INDIVIDUAL'S LAST NAME</b>		<b>FIRST NAME</b>	<b>MIDDLE NAME</b> <b>SUFFIX</b>
<b>7. CHANGED (NEW) OR ADDED INFORMATION:</b>			
<b>7a. ORGANIZATION'S NAME</b> U.S. Bank National Association, as Trustee			
<b>OR 7b. INDIVIDUAL'S LAST NAME</b>		<b>FIRST NAME</b>	<b>MIDDLE NAME</b> <b>SUFFIX</b>
<b>7c. MAILING ADDRESS</b> 1420 Fifth Avenue, 7th Floor		<b>CITY</b> Seattle	<b>STATE</b> <b>POSTAL CODE</b> <b>COUNTRY</b> WA 98101
<b>7d. SEE INSTRUCTIONS</b>	<b>ADD'L INFO RE ORGANIZATION DEBTOR</b>	<b>7e. TYPE OF ORGANIZATION</b>	<b>7f. JURISDICTION OF ORGANIZATION</b> <b>7g. ORGANIZATIONAL ID #, if any</b> <input type="checkbox"/> NONE
<b>8. AMENDMENT (COLLATERAL CHANGE):</b> check only one box. Describe collateral <input type="checkbox"/> deleted or <input type="checkbox"/> added, or give entire <input type="checkbox"/> revised collateral description, or describe collateral <input type="checkbox"/> assigned.			

<b>9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT</b> (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here <input type="checkbox"/> and enter name of DEBTOR authorizing this Amendment.			
<b>9a. ORGANIZATION'S NAME</b> U.S. Bank Trust National Association, as Trustee			
<b>OR 9b. INDIVIDUAL'S LAST NAME</b>		<b>FIRST NAME</b>	<b>MIDDLE NAME</b> <b>SUFFIX</b>

**10. OPTIONAL FILER REFERENCE DATA**  
Filed with: OR - Secretary of State; Debtor: [Portland Bulk Terminals, L.L.C.] A/C#97231560 F#106577 A#185517 L01494C



304184  
12/8/2004 3:03:02 PM  
OR Sec. of State

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME &amp; PHONE OF CONTACT AT FILER (optional)

Juli Killgore (503) 944-7030

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

Juli Killgore  
Port of Portland  
P.O. Box 3529  
Portland, OR. 97208

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

S92213

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or record) in the REAL ESTATE RECORDS.

2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.3. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.4. ☐ **ASSIGNMENT:** (full or partial): Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 9.5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in Item 6 and/or 7.☐ **CHANGE name and/or address:** Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change) in Item 7c. ☐ **DELETE name:** Give record name to be deleted in Item 6a or 6b. ☐ **ADD name:** Complete Item 7a or 7b, and also Item 7c; also complete Items 7d-7g (if applicable).6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

7d.

ADDL INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, if any

☐ NONE8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.Describe collateral ☒ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

See collateral further described on Exhibit A attached hereto.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

U.S. Bank National Association, as Trustee

OR 9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**

**STATE OF OREGON**

Corporation Division - UCC

Public Service Building

255 Capitol Street NE, Suite 151

Salem, OR 97310 - 1327

(503) 986-2200 Facsimile (503) 373-1166

LEGAL DEPARTMENT

04 DEC 15 AM 8:24

**ACKNOWLEDGMENT NOTICE**

PORT OF PORTLAND

**PORT OF PORTLAND-JULIE KILLGORE  
PO BOX 3529  
PORTLAND, OR 97208**

File No: **304184**

File Date: **12/08/2004**

Expiration Date: **03/26/2006**

Entered By: **CARMER**

Doc Type: **UCC-3 AMENDMENT**

Your document was filed showing the file number and date listed above. The debtor name(s) and address(es) and secured party of record name(s) and address(es) are listed below.

If you have any questions regarding this notice, contact the Secretary of State, Corporation Division. Please refer to the file number listed above.

Note: You can access our records or filing forms through the Internet at the address:  
<http://filinginoregon.com>

**Secured party of record name(s) and address(es)**

US BANK NA  
1420 FIFTH AVE 7TH FL  
SEATTLE, WA 98101

**Debtor name(s) and address(es)**

PORTLAND BULK TERMINALS LLC  
1211 SW FIFTH AVE SUITE 1800  
PORTLAND, OR 97204-3785



8006645905

494010  
12/8/2004 3:03:02 PM  
OR Sec. of State

## UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME &amp; PHONE OF CONTACT AT FILER [optional]

Juli Killgore (503) 944-7030

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

Juli Killgore  
Port of Portland  
P.O. Box 3529  
Portland, OR. 97208

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

494010

1b. This FINANCING STATEMENT AMENDMENT is  
to be filed (for record) (or record) in the  
REAL ESTATE RECORDS.2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.4. ☐ ASSIGNMENT: (Full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.  
Also check one of the following three boxes and provide appropriate information in item 6 and/or 7.☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.☐ DELETE name: Give record name to be deleted in item 6a or 6b.☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete item 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. ADDL. INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, if any  
☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☒ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

See collateral further described on Exhibit A attached hereto.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

U.S. Bank National Association, as Trustee

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

404 FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 8/02)

**STATE OF OREGON**  
Corporation Division - UCC  
Public Service Building  
255 Capitol Street NE, Suite 151  
Salem, OR 97310 - 1327  
(503) 986-2200 Facsimile (503) 373-1166

**ACKNOWLEDGMENT NOTICE**

**PORT OF PORTLAND  
PO BOX 3529  
PORTLAND, OR 97208**

File No: **494010**  
File Date: **12/08/2004**  
Expiration Date: **12/20/2009**  
Entered By: **CARMER**  
Doc Type: **UCC-3      AMENDMENT**

Your document was filed showing the file number and date listed above. The debtor name(s) and address(es) and secured party of record name(s) and address(es) are listed below.

If you have any questions regarding this notice, contact the Secretary of State, Corporation Division. Please refer to the file number listed above.

Note: You can access our records or filing forms through the Internet at the address:  
<http://filinginoregon.com>

**Secured party of record name(s) and address(es)**

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE  
1420 FIFTH AVENUE , 7TH FLOOR  
SEATTLE, WA 98101

**Debtor name(s) and address(es)**

PORTLAND BULK TERMINALS LLC  
15550 N LOMBARD  
PORTLAND, OR 97203

**AMENDMENT NO. 6 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.**

This AMENDMENT NO. 6 TO GROUND LEASE ("Amendment No. 6") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a ground lease dated March 14, 1996, (Port Agreement No. 96-039) (the "Lease") which was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997, further amended by Amendment No. 2 to Ground Lease dated October 23, 1997, further amended by Amendment No. 3 to Ground Lease dated September 9, 1999, further amended by Amendment No. 4 to Ground Lease dated May 19, 2003, and further amended by Amendment No. 5 to Ground Lease dated July 1, 2004.

B. The Port and Lessee now wish to amend the Lease to modify the security deposit structure.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. SECURITY DEPOSIT**

The parties agree that, as of the date of this Amendment Number 6, the amount of the Deposit required under section 3.7 of the Lease is THREE HUNDRED NINE THOUSAND NINE HUNDRED EIGHTY FIVE AND 91/100 DOLLARS (\$309,985.91). The parties further agree that, if the irrevocable standby letter of credit otherwise required by section 3.7 of the Lease is not readily and economically available, Lessee may deliver to the Port an equivalent amount of cash or other security approved by the Port in lieu of the irrevocable standby letter of credit. If Lessee substitutes cash or other security pursuant to this Amendment Number 6, the substitute shall be considered the Deposit under section 3.7 of the Lease, and, to the extent possible, shall be subject to all the rights and remedies under section 3.7 of the Lease.

2. **WARRANTY OF AUTHORITY**

The individual executing this Amendment No. 6 on behalf of Lessee represents and warrants that he is authorized by Lessee to do so.

3. **DEFINED TERMS**

All capitalized terms used but not otherwise defined in this Amendment No. 6 shall have the same meaning as in the Lease or any of the preceding amendments.

4. **EFFECT OF AMENDMENT**

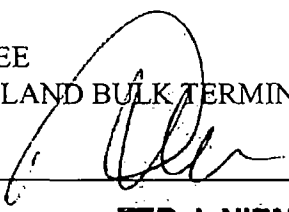
Except as otherwise specified in this Amendment No. 6, all of the terms and conditions of the Lease, as previously amended, shall remain in full force and effect.

5. **ENTIRE AGREEMENT**

This Amendment No. 6 represents the entire agreement between the parties regarding the Lease, and supersedes all prior and contemporaneous discussions and agreements, written or oral regarding the same subject. No further amendment to the Lease shall be effective unless in writing and signed by the parties hereto. Both parties agree to be bound by the terms and conditions of this Amendment.

This Amendment No. 6 is dated and is effective this 16th day of March, 2005.

LESSEE  
PORTLAND BULK TERMINALS, L.L.C.

By: 

Print Name: **TED J. NIEMAN**  
~~Senior Vice President~~  
**General Counsel and**  
As Its: **Secretary**

By: 

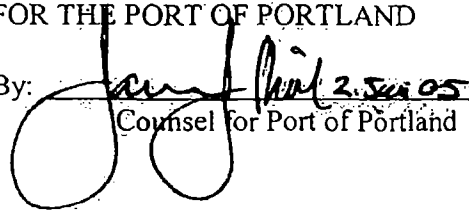
Print Name: **Dwayne N. Dahl, CA**  
~~Vice President, Finance &~~  
**Chief Financial Officer**  
As Its: \_\_\_\_\_

PORT  
THE PORT OF PORTLAND

By: 

Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By: 

Counsel for Port of Portland

**AMENDMENT NO. 7 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.**

This AMENDMENT NO. 7 TO GROUND LEASE ("Amendment No. 7") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a Ground Lease dated March 14, 1996, (Port Agreement No. 96-039) which was subsequently amended by Amendment No. 1 to Ground Lease dated August 29, 1997, further amended by Amendment No. 2 to Ground Lease dated October 23, 1997, further amended by Amendment No. 3 to Ground Lease dated September 9, 1999, further amended by Amendment No. 4 to Ground Lease dated May 19, 2003, further amended by Amendment No. 5 to Ground Lease dated July 1, 2004, and further amended by Amendment No. 6 to Ground Lease dated March 16, 2005 (as amended, the "Lease").

B. The Port and Lessee are in negotiations for expansion of the Bulk Cargo Facility on the Property, which expansion contemplates the inclusion of additional real property as part of the Land under the Lease for the full Lease Term, provision for the design and construction of an expansion of the existing potash storage building and other Improvements, and additional Bond financing (collectively, the "Expansion"). The Expansion will require the negotiation and execution by the parties of new agreements and modifications to existing agreements in connection with the Lease and the Bonds.

C. In connection with the Expansion, Lessee desires current access to a portion of such additional real property in order to perform due diligence and to perform certain surcharge activities in preparation for the building expansion.

D. The Port and Lessee now wish to amend the Lease to provide for (1) the joint performance of an environmental site assessment of the existing Property which will satisfy the criteria for "all appropriate inquiry" into the history of the Property for purposes of state and federal law and will establish, as between the Port and the Lessee, the environmental conditions baseline for the Property; (2) definition of the parties' respective responsibilities regarding pre-existing hazardous substance releases on the Property; and (3) to allow Lessee to perform surcharge activity while the Bond

financing is being put into place and the long term amendment to the Lease is being negotiated. This Amendment No. 7 may be terminated on thirty (30) days notice by either party, as provided below.

NOW THEREFORE, the Port and Lessee agree as follows:

#### **1. AGREEMENT TO LEASE AND DESCRIPTION OF PROPERTY**

In addition to the original Property leased by the Port to Lessee under the Lease, the Port hereby leases to Lessee and Lessee leases from the Port approximately 24.01 acres of real property more particularly described and shown as the "Port Expansion Area" on **Exhibit A-1** attached to the Lease (a copy of which is attached to this Amendment No. 7 for reference) for the Term and only for the Allowed Uses set forth below. Except as expressly provided in this Amendment No. 7, all references in the Lease to the Land and the Property shall be deemed to include the Port Expansion Area and the Port Expansion Area shall be subject to all the terms and conditions contained in the Lease.

#### **2. TERM**

The term of the Lease with respect to the Port Expansion Area shall commence on the Effective Date of this Amendment No. 7, and shall continue automatically on a month-to-month basis until Bond financing is put into place and a long term amendment to the Lease ("Subsequent Amendment") is entered into between the parties as further provided below. Notwithstanding the foregoing, in the event that the parties have not executed the Subsequent Amendment by December 31, 2006, either party may terminate the Lease, with respect to the Port Expansion Area only, at any time after such date upon thirty (30) days advance written notice to the other party. In the event of termination of the Lease with respect to the Port Expansion Area, Lessee shall complete (i) all termination and environmental obligations with respect to the Port Expansion Area as provided in Section 9 of the Lease; and (ii) all obligations with respect to the Surcharge Work (defined below) as provided in Section 5 of this Amendment No. 7.

#### **3. ALLOWED USES OF PORT EXPANSION AREA**

Notwithstanding Section 1.3.1 of the Lease with respect to the Permitted Use of the Property, Lessee shall use the Port Expansion Area solely to conduct any desired due diligence of the Port Expansion Area, in addition to the Expanded Audit described below, and to perform certain surcharge activities on the Port Expansion Area as further provided below ("Allowed Uses"). The Port Expansion Area may be used for no use other than the "Allowed Uses" without the Port's prior written consent, which consent shall be granted or withheld in the Port's sole discretion.

#### **4. PUBLIC CONTRACTING LAWS**

Unless excused in a specific instance in writing by the Port, Lessee shall solicit sealed bids for each construction subcontract to be funded with Port bond sale proceeds. Solicitation of bids shall be advertised in the Daily Journal of Commerce. Lessee may establish minimum bidder qualifications. Bids shall be opened publicly in the presence of a Port representative. A subcontract may be awarded only to the qualified bidder offering the lowest price, provided Lessee may take reasonable measures

2 - Amendment No. 7 to Ground Lease

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approved by the Port to compare bids that are based on slightly different work scopes. Lessee shall obtain the Port's concurrence before rejecting a low bidder as unqualified.

Provisions required in public contracts under ORS Chapter 279C are incorporated by this reference and shall be applicable to construction work performed or reimbursed with Port bond sale proceeds.

## **5. SURCHARGE**

### **5.1 Surcharge Work**

Lessee may use the sandy fill material located on the Property in the location shown on attached **Exhibit B** ("Stockpile Area") to surcharge the storage building expansion site ("Surcharge Area"), also shown on attached **Exhibit B**. Prior to commencement of the surcharge activities to be performed under this Section 5 and all associated activities, including without limitation the relocation of certain cable and other utility lines in order to perform the surcharge (collectively, "Surcharge Work"), Lessee shall provide a detailed scope for the Surcharge Work to the Port for its approval ("Work Scope"). In the event that there is insufficient fill material within the Stockpile Area to complete the surcharge of the Surcharge Area, Lessee may then take fill material from the "Secondary Stockpile Area" shown on attached **Exhibit B** to complete the Surcharge Work (collectively, all such fill material is the "Surcharge Material"). Upon completion of the surcharge of the Surcharge Area, Lessee shall return the excess Surcharge Material to its prior location(s) on the Stockpile Area or, as applicable, the Secondary Stockpile Area, or to another location on the Property mutually agreed to by the parties. Any supplemental fill material brought onto the work site other than the Surcharge Material must receive prior written approval by the Port. All Surcharge Material is provided AS IS, WHERE IS and, if brought from off-site, must be tested for environmental condition by Lessee prior to use, with a copy of such test results provided to the Port.

### **5.2 Requirements under Lease and Public Contracting Code**

All Surcharge Work shall be performed in compliance with the approved Work Scope, all requirements of the Lease, and all requirements of this Amendment No. 7. Such requirements shall include, without limitation, delivery to the Port of a performance bond and a labor and materials payment bond prior to the commencement of the Surcharge Work as provided in Section 4.1.1 of the Lease. In addition, Lessee agrees that each person doing or contracting to do all or any part of the Surcharge Work shall be paid not less than the prevailing rate of wage set forth in the Oregon Bureau of Labor and Industries General Wage Determination attached to this Amendment No. 7 as **Exhibit C**, for the trade or occupation in which that person is engaged. Lessee shall also ensure that the fee required by ORS 279.C825 is paid to the Commissioner of the Bureau of Labor and Industries pursuant to the Commissioner's administrative rule.

### **5.3 Limitations on Surcharging in Former Blue Lagoon Uplands**

Lessee shall take the necessary steps to protect the three (3) monitoring wells located in the Former Blue Lagoon Uplands (described in Section 7 below) and depicted on attached **Exhibit D** ("Wells"), which steps shall include, as necessary, earliest notification and coordination with the Port to have the Port close and relocate the Wells. It is understood and agreed that the Wells are not located

on the Surcharge Area. It is further understood and agreed that, as between the parties, the Port will be fully responsible for any and all matters relating in any way to the Wells and shall assume all associated costs and risks of loss, except to the extent of any gross negligence or willful misconduct by Lessee.

Lessee will also comply with, and have its contractors and subcontractors comply with the Contaminated Area and Media Management Plan ("CAMMP") and associated "Implementation Plan," both dated January 27, 2006 and incorporated herein by this reference, with regard to soil and groundwater management within the Former Blue Lagoon Uplands. With respect to the required management activities, as between the parties, the Port shall have responsibility for all Hazardous Substance related testing, monitoring, reporting and disposal costs related to the implementation of the CAMMP, provided that Lessee performs the Surcharge Work in conformance with the CAMMP and the Surcharge Work is coordinated in advance with the Port. Provided that Lessee performs the Surcharge Work in conformance with the CAMMP and the Implementation Plan, and the Surcharge Work is coordinated in advance with the Port, the Port shall continue to be responsible for the costs associated with remedial actions required in connection with the Former Blue Lagoon Uplands, as more particularly set forth in Exhibit G to the Lease entitled "Remediation Requirements and Procedures," and the Port shall also be responsible for any reasonable construction delay costs suffered by Lessee resulting from any required remediation by the Port in the Former Blue Lagoon Uplands during construction of the expansion of Lessee's existing potash storage building. Notwithstanding anything to the contrary in this Section 5.3 or in Exhibit G to the Lease, the Lessee, and not the Port, will be responsible for any exacerbation of the condition of the Former Blue Lagoon Uplands caused by Lessee's failure to comply with the CAMMP or the Implementation Plan, or by Lessee's failure to seek Port review and written approval of future development in the Former Blue Lagoon Uplands after completion of the Surcharge Work.

#### **5.4 Other Conditions**

Lessee acknowledges and agrees that Lessee is performing the Surcharge Work at Lessee's sole risk and expense. Lessee shall be responsible for all utility locates associated with the Surcharge Work.

#### **6. INITIAL ENVIRONMENTAL AUDIT AND PERIODIC SCHEDULED AUDITS**

A Periodic Audit of the Property is currently being performed under Section 6.3 of the Lease. Following the execution of this Amendment No. 7, the Port and Lessee contemplate executing the Subsequent Amendment to incorporate the Port Expansion Area, together with certain additional real property as shown on attached **Exhibit E** (collectively, the "Total Additional Area") as part of the Property under the Lease for the entire remaining Lease Term. In anticipation of such amendment, Lessee and the Port have expanded the scope of the Periodic Audit to include the Periodic Audit of the original Property together with an Initial Audit baseline Environmental Audit of the Total Additional Area (collectively, the "Expanded Audit"). The Expanded Audit shall also include sampling of the Surcharge Material. The Port and Lessee agree to work cooperatively to perform the Expanded Audit promptly before and following the Effective Date of this Amendment No. 7, and to share equally the

cost of the Expanded Audit. As of the Effective Date of this Amendment No. 7, the Port and Lessee have jointly approved both the consultant, Hart Crowser, Inc., and the scope and procedures for the Expanded Audit. The Expanded Audit with respect to the Port Expansion Area shall serve as the Initial Audit for the Port Expansion Area, and the baseline for determination of all potential future environmental liability with respect to the Port Expansion Area, as further provided in Section 6 of the Lease.

#### **7. ACCESS TO AND COMPLETION OF REMEDIAL ACTION OF TERMINAL 5 UPLANDS**

The Port Expansion Area is adjacent to the Portland Harbor Superfund Site which is undergoing a remedial investigation and feasibility study under an Administrative Order on Consent between the United States Environmental Protection Agency, the Port and other parties dated September 28, 2001. In addition, certain Terminal 5 uplands depicted in attachment **Exhibit D** ("Former Blue Lagoon Uplands") are being evaluated by the Oregon Department of Environmental Quality ("DEQ") for Hazardous Substance Releases associated with slag, scale and steel mill waste materials disposal. In September 2000, the Port requested that DEQ issue a No Further Action determination for the Former Blue Lagoon Uplands based on the Port's Preliminary Assessment of the area. The Port is completing further evaluation of the area. To the extent that any further investigation or remedial actions are required by law of the Port for the Former Blue Lagoon Uplands, the Port reserves for itself, its agents, contractors, assigns and its representatives, including governmental agencies, the right to access the Former Blue Lagoon Uplands following the execution of this Amendment No.7 to fulfill such requirements. Except in cases of emergency, such entry shall be made with reasonable advance written notice to Lessee and during normal business hours. The Port's reserved rights under this Section 7 shall not unreasonably interfere with the rights and operations of Lessee on the Property. The Port will continue its evaluation of and perform any remedial investigation and/or remediation required by law in connection with the Former Blue Lagoon Uplands, through and including obtaining a "No Further Action" determination from DEQ.

#### **8. DELIVERY OF PROPERTY**

Lessee shall have the right to possession of the Port Expansion Area as of the Effective Date of this Amendment No. 7.

#### **9. CONDITION OF PROPERTY**

Except as expressly provided herein, the Port makes no warranties or representations regarding the condition of the Port Expansion Area, including without limitation the environmental condition of the Port Expansion Area or its suitability for Lessee's intended use. Lessee has inspected and accepts the Port Expansion Area in "AS IS" condition upon taking possession. Notwithstanding the foregoing, the Expanded Audit shall serve as the baseline for determination of all potential future environmental liability with respect to the Port Expansion Area as provided for in Section 6 of the Lease and in Section 6 of this Amendment No. 7.

**10. WARRANTY OF AUTHORITY**

The individuals executing this Amendment No. 7 on behalf of Lessee represent and warrant that they are authorized by Lessee to do so.

**11. DEFINED TERMS**

All capitalized terms used but not otherwise defined in this Amendment No. 7 shall have the same meaning as in the Lease.

**12. EFFECT OF AMENDMENT**

Except as otherwise specified in this Amendment No. 7, all of the terms and conditions of the Lease, as previously amended, shall remain in full force and effect.

**13. EXECUTION OF MULTIPLE COUNTERPARTS**

This Amendment No. 7 may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

**14. AMENDMENTS**

No further amendment to the Lease shall be effective unless in writing and signed by the parties hereto. Both parties agree to be bound by the terms and conditions of this Amendment No. 7.

This Amendment No. 7 is dated and is effective this 15 day of February, 2006.

**LESSEE**  
**PORTLAND BULK TERMINALS, L.L.C.**

By: [Signature]

Print Name: **TED J. NIEMAN**  
**Senior Vice President**  
As Its: **General Counsel and**  
**Secretary**

By: [Signature]

Print Name: **Dwayne N. Dahl, CA**  
**Vice President, Finance &**  
As Its: **Chief Financial Officer**

**PORT**  
**THE PORT OF PORTLAND**

By: [Signature]  
Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By: [Signature]  
Counsel for Port of Portland

11-09-05  
Date Approved By Commission

CURVE DATA					
No.	DELTA	RADIUS	LENGTH	CORD	CORD BEARING
1	69°36'21"	828.30'	770.78'	681.66'	N 78°35'16" E
2	28°38'26"	828.31'	313.17'	308.92'	S 84°07'07" E
3	26°15'37"	828.30'	810.84'	580.82'	S 11°39'30" E
4	80°28'22"	828.31'	829.58'	809.12'	S 82°35'16" W
5	110°28'19"	828.30'	1313.31'	1023.28'	N 1°18'18" W
6	11°25'35"	828.31'	124.81'	124.70'	N 38°54'29" E
7	1°47'19"	593.81'	142.80'	142.58'	S 28°43'28" W
8	82°38'22"	593.81'	652.85'	620.29'	S 71°42'35" W
9	87°33'47"	593.80'	1011.12'	893.32'	N 28°10'18" W
10	28°13'23"	828.30'	286.84'	284.15'	S 35°40'54" E

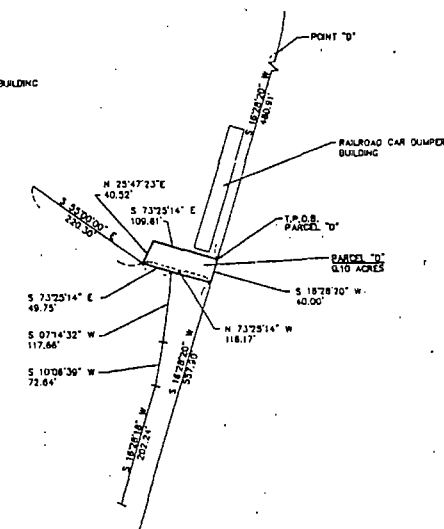
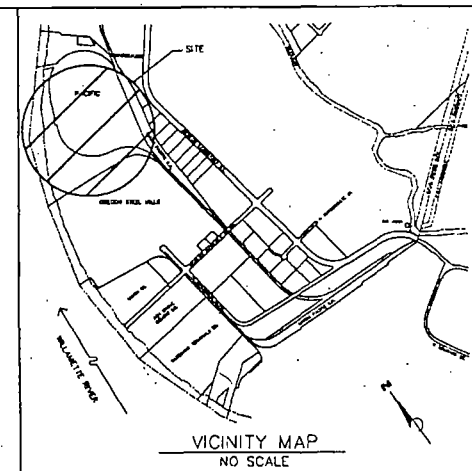
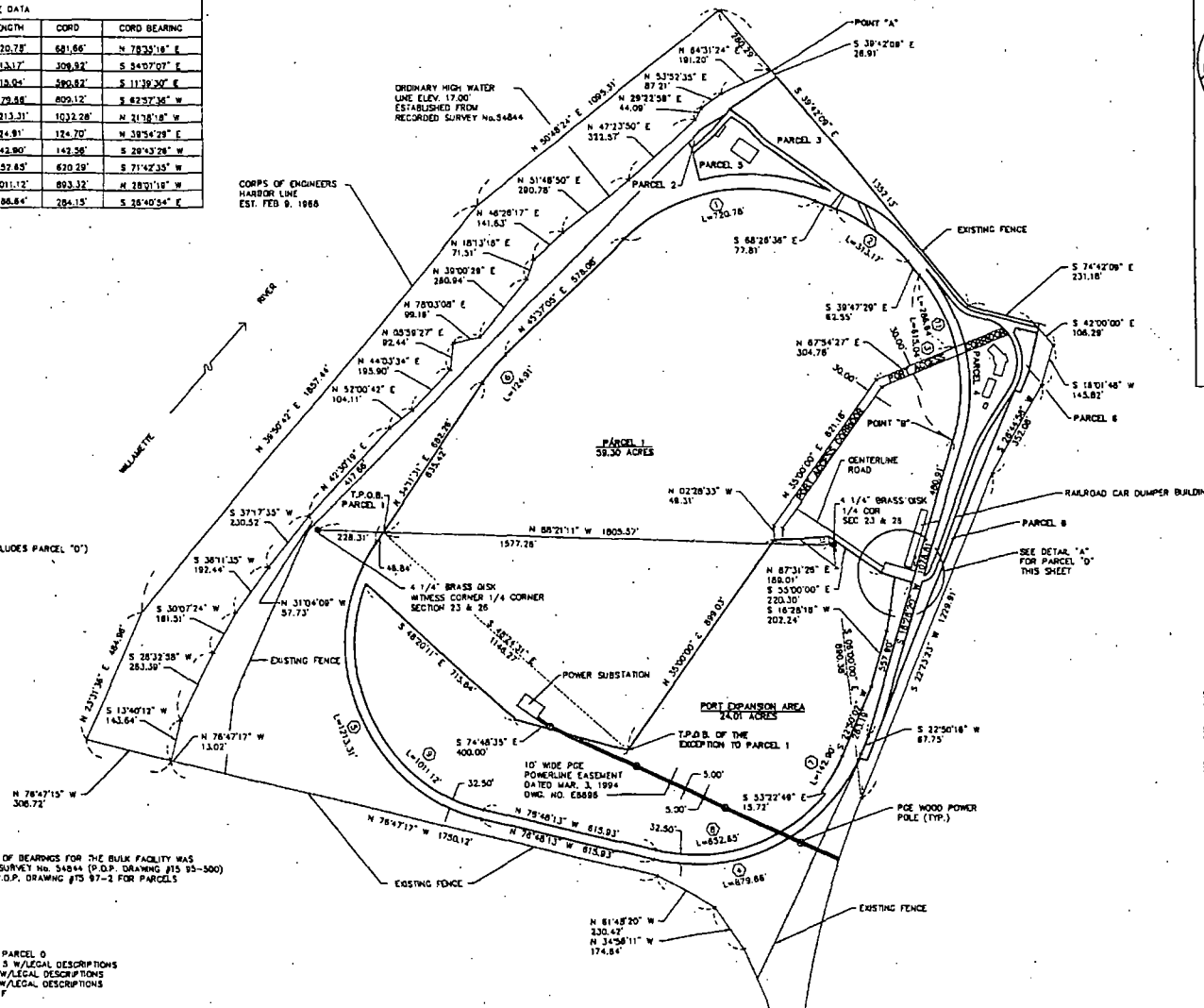
PARCEL 1	59.30 ACRES (INCLUDES PARCEL "D")
PARCEL 2	0.07 ACRES
PARCEL 3	1.98 ACRES
PARCEL 4	1.70 ACRES
PARCEL 5	1.08 ACRES
PARCEL 6	0.87 ACRES
TOTAL	65.00 ACRES

# NOTES

1. EXISTING BOUNDARY AND BASIS OF BEARINGS FOR THE BULK FACILITY WAS ESTABLISHED FROM RECORDED SURVEY NO. 54864 (P.O.P. DRAWING 215 95-500)
2. THIS EXHIBIT PLAT SUPERSEDES P.O.P. DRAWING 215 97-2 FOR PARCELS 1, 2, 3, 4, 5 AND 7
3. D.C. FILE #A686REVISED.DWG

# INDEX

- SHEET 1 SITE MAP W/DETAIL FOR PARCEL 0
- SHEET 2 DETAIL PARCELS 2, 3 & 5 W/LEGAL DESCRIPTIONS
- SHEET 3 DETAIL PARCELS 4 & 6 W/LEGAL DESCRIPTIONS
- SHEET 4 DETAIL PARCELS 1 & 7 W/LEGAL DESCRIPTIONS



DETAIL "A"  
NOT TO SCALE

Exhibit A 1

<p>PORT OF PORTLAND PORTLAND, OREGON</p>				<p>REGISTERED PROFESSIONAL LAND SURVEYOR CHRISTOPHER WANDERWOLF 2718 EXP. 6/30/2008</p>				<p>DESIGNED BY: R.K. ALDERSEDAES DRAWN BY: R.K. ALDERSEDAES CHECKED BY: C.M. VANDERWERF DATE: SEPT., 1998 SCALE: 1"=200'</p>				<p>TERMINAL 5 EXHIBIT PLAT PORTLAND BULK TERMINAL, LLC SUBMITTED BY: [Signature] DATE: [Date] DRAWING NO.: TS 1999-1 1/4 (EP)</p>			
<p>19950020 REVISION NUMBER</p>				<p>22286-210 PROJECT NUMBER</p>				<p>19950020 REVISION NUMBER</p>				<p>22286-210 PROJECT NUMBER</p>			

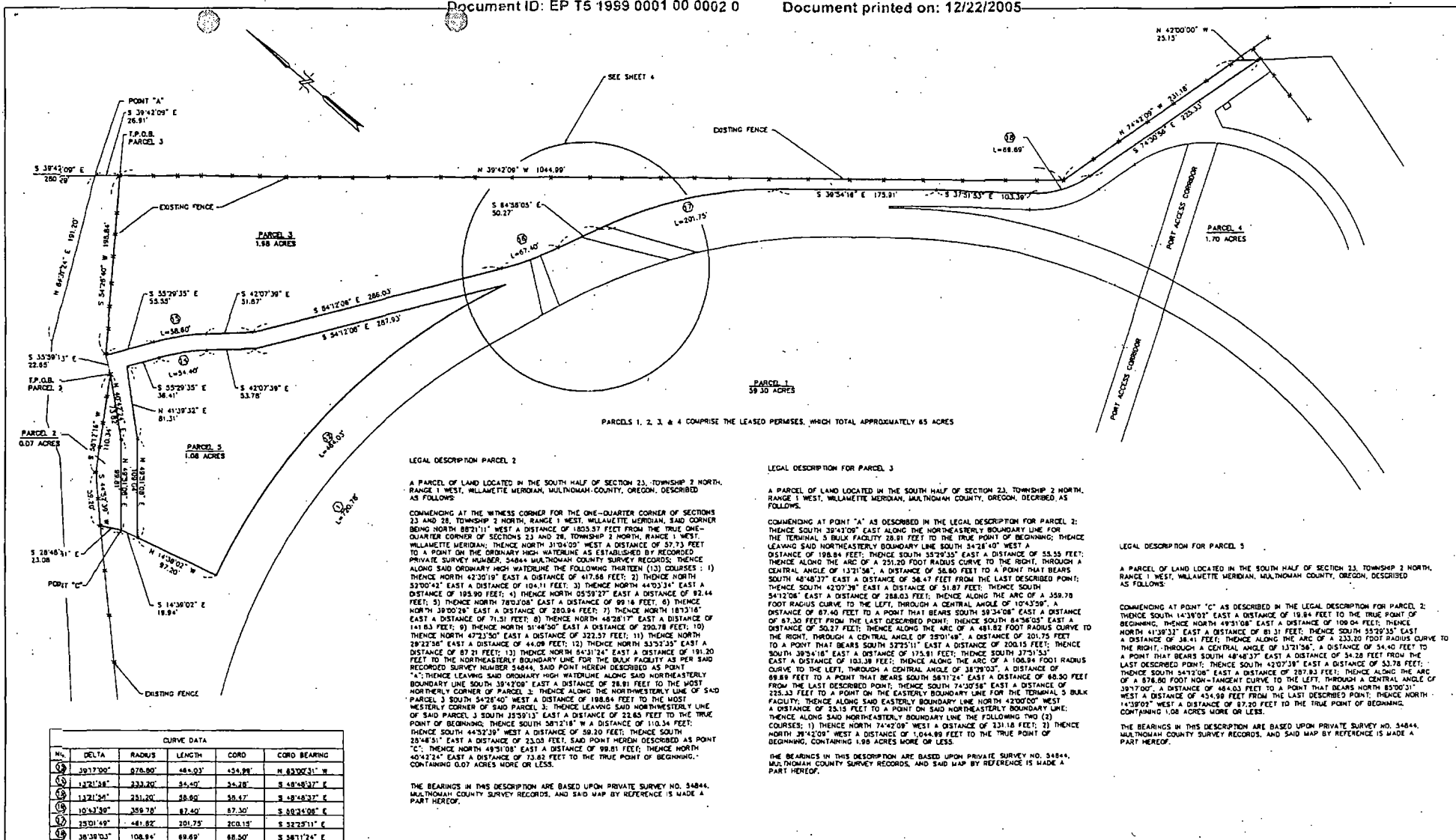
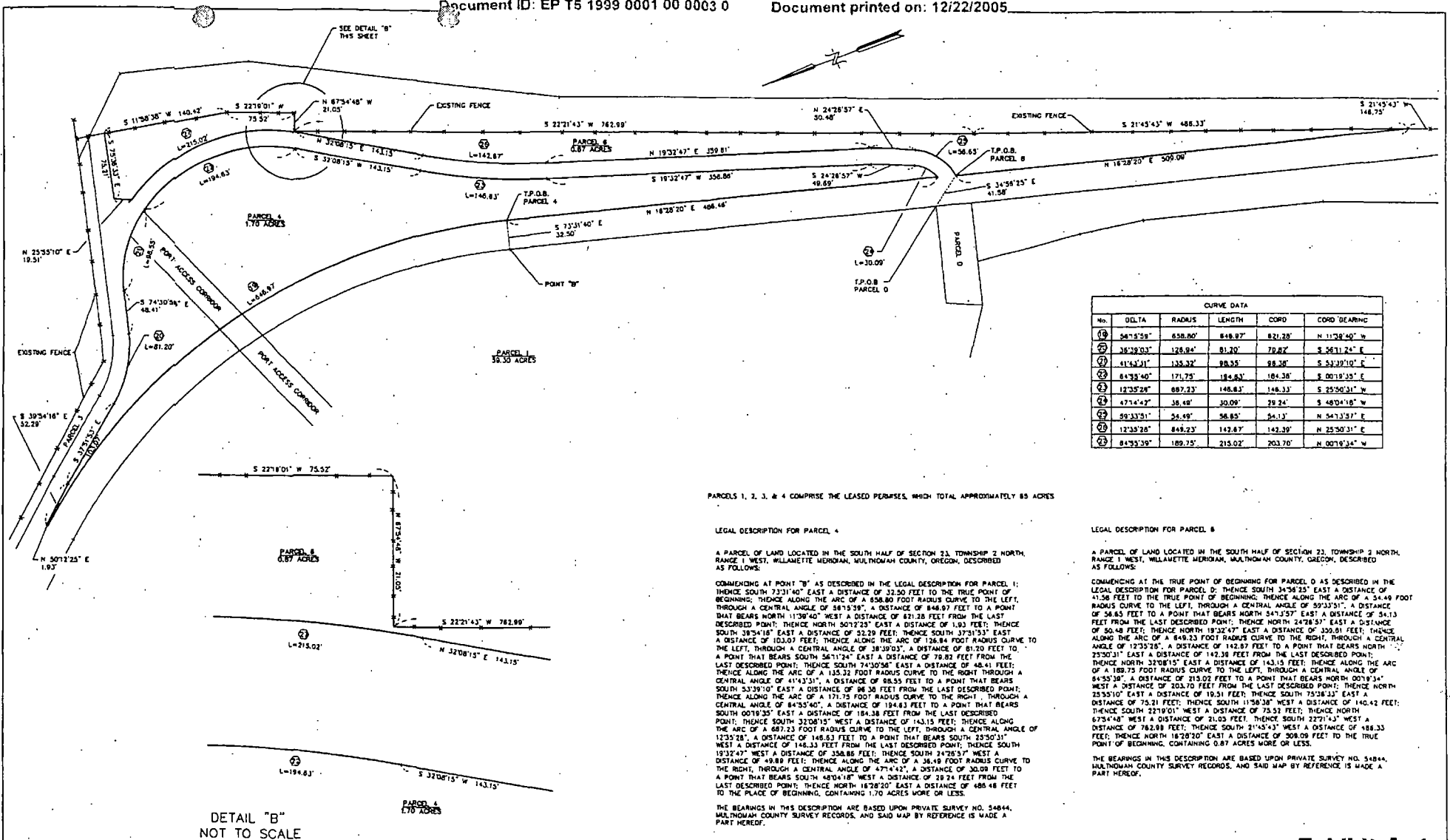


Exhibit A 1

NO.		DATE	BY	REVISIONS	DATE	APPROV'D	NO.	DATE	BY	REVISIONS	DATE	APPROV'D
<div style="display: flex; justify-content: space-between;"> <div> <p>PORT OF PORTLAND PORTLAND, OREGON</p> <p><i>[Signature]</i> PROJECT MANAGER</p> </div> <div> <p>REGISTERED PROFESSIONAL LAND SURVEYOR</p> <p><i>[Signature]</i> OREGON DIANE VANDERWERF 274</p> <p>EXP. 6/30/2009</p> </div> <div> <p>DESIGNED BY: R.K. ALDERSEBAES</p> <p>DRAWN BY: R.K. ALDERSEBAES</p> <p>CHECKED BY: C.M. VANDERWERF</p> <p>DATE: FEB. 1999</p> <p>SCALE: 1"=50'</p> </div> <div> <p>TERMINAL 5</p> <p>EXHIBIT PLAT</p> <p>PORTLAND BULK TERMINAL, LLC</p> <p>SUBMITTED BY: <i>[Signature]</i></p> <p>DATE: <i>[Signature]</i></p> <p>DRAWN NO. TS 1999-1 2/4 (EP)</p> </div> </div>												



CURVE DATA					
NO.	DELTA	RADIUS	LENGTH	CORD	CORD BEARING
10	56°57'59"	638.00	848.87	821.28	N 11°28'40" W
11	38°30'33"	126.94	81.20	70.87	S 24°11'24" E
12	41°43'31"	135.32	89.55	88.38	S 24°39'10" E
13	61°38'40"	171.75	184.63	164.36	S 00°15'35" E
14	12°35'26"	887.23	148.63	148.33	S 25°00'31" W
15	47°14'47"	38.18	30.09	29.24	S 48°04'16" W
16	89°33'31"	24.49	58.85	58.13	N 54°13'29" E
17	12°35'26"	889.23	142.67	142.39	N 25°00'31" W
18	81°53'39"	149.75	215.02	203.70	N 00°15'34" W

PARCELS 1, 2, 3, & 4 COMPRISE THE LEASED PERMITS, WHICH TOTAL APPROXIMATELY 85 ACRES.

## LEGAL DESCRIPTION FOR PARCEL -

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH,  
RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED  
AS FOLLOWS:

COMMENCING AT POINT "B" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 1:  
THENCE SOUTH 73°31'40" EAST A DISTANCE OF 32.50 FEET TO THE TRUE POINT OF  
BEGINNING; THENCE ALONG THE ARC OF A 558.00 FOOT RADIUS CURVE TO THE LEFT,  
THROUGH A CENTRAL ANGLE OF 38°30'30", A DISTANCE OF 81.70 FEET TO A POINT  
THAT BEARS NORTH 17°59'40" WEST A DISTANCE OF 421.28 FEET FROM THE LAST  
DESCRIBED POINT; THENCE NORTH 50°12'25" EAST A DISTANCE OF 1.93 FEET; THENCE  
SOUTH 38°54'18" EAST A DISTANCE OF 32.29 FEET; THENCE SOUTH 73°31'53" EAST  
A DISTANCE OF 10.24 FEET TO A POINT THAT BEARS NORTH 17°59'40" WEST TO THE  
POINT, THROUGH A CENTRAL ANGLE OF 38°30'30", A DISTANCE OF 81.70 FEET TO A  
POINT THAT BEARS SOUTH 56°17'24" EAST A DISTANCE OF 79.82 FEET FROM THE  
LAST DESCRIBED POINT; THENCE SOUTH 74°50'55" EAST A DISTANCE OF 48.41 FEET;  
THENCE ALONG THE ARC OF A 558.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A  
CENTRAL ANGLE OF 41°43'31", A DISTANCE OF 89.55 FEET TO A POINT THAT BEARS  
SOUTH 53°39'10" EAST A DISTANCE OF 18.30 FEET FROM THE LAST DESCRIBED POINT;  
THENCE ALONG THE ARC OF A 558.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A  
CENTRAL ANGLE OF 48°55'40", A DISTANCE OF 194.83 FEET TO A POINT THAT BEARS  
SOUTH 00°19'25" EAST A DISTANCE OF 184.38 FEET FROM THE LAST DESCRIBED  
POINT; THENCE SOUTH 32°08'15" WEST A DISTANCE OF 74.515 FEET; THENCE ALONG  
THE ARC OF A 558.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE  
OF 123°25'18", A DISTANCE OF 146.83 FEET TO A POINT THAT BEARS SOUTH 25°50'31"  
WEST A DISTANCE OF 148.33 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH  
53°50'15" EAST A DISTANCE OF 18.30 FEET TO A POINT THAT BEARS SOUTH 00°19'25"  
EAST A DISTANCE OF 49.89 FEET; THENCE ALONG THE ARC OF A 36.49 FOOT RADIUS CURVE TO  
THE RIGHT, THROUGH A CENTRAL ANGLE OF 47°44'42", A DISTANCE OF 30.09 FEET TO  
A POINT THAT BEARS SOUTH 48°54'18" WEST A DISTANCE OF 28.24 FEET FROM THE  
LAST DESCRIBED POINT; THENCE ALONG THE ARC OF A 36.49 FOOT RADIUS CURVE TO  
THE PLACE OF BEGINNING, CONTAINING 167.90 SQUARE FEET OR LESS.


THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 34844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

LEGAL DESCRIPTION FOR PARCEL 8

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH,  
RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED  
AS FOLLOWS:

[illegible]

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

	8/19/99	NCA	FINAL REVISIONS	DIV															
NO.	DATE	BY	REVISIONS	C'D	APPROV	NCA	DATE	BY	REVISIONS	C'D	APPROV								

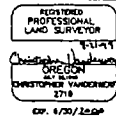


PORT OF PORTLAND  
PORTLAND, OREGON

  
PROJECT MANAGER

950920

22384-219



DESIGNED BY	R.K. ALDERSEBAES
DRAWN BY	R.K. ALDERSEBAES
CHECKED BY	C.W. VANDERWERF
DATE	FEB., 1999
SCALE	1"=30'

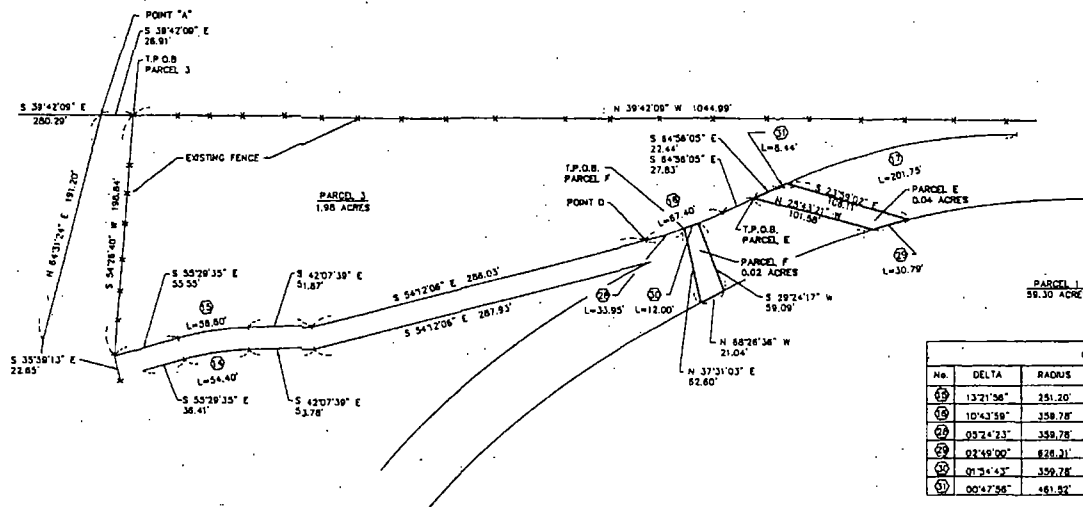
TERMINAL 5

EXHIBIT PLAT  
PORTLAND BULK TERMINAL, LLC

SUBMITTED BY: Charles E. Wiley  
SUPERVISOR

EXPLAINED NO.  
TS 1999-1 3/4 (EP)

## Exhibit A 1



LEGAL DESCRIPTION FOR PARCEL E

AN EASEMENT FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A CONVEYOR SYSTEM. ALL PERMANENT STRUCTURES WITHIN THIS EASEMENT SHALL BE CONSTRUCTED ABOVE AN ELEVATION WHICH IS 23 FEET ABOVE THE RAIL ELEVATION WITHIN THE EASEMENT. A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

[illegible]

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

LEGAL DESCRIPTION FOR PARCEL D

AN EASEMENT RESERVED BY THE PORT TO BE USED FOR INGRESS AND EGRESS PURPOSES, LOCATED IN THE NORTH HALF OF SECTION 28, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "B" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL 1:  
 THENCE ALONG THE EASTERLY LINE OF PARCEL 1 SOUTH 18°28'20" WEST A  
 DISTANCE OF 480.12 FEET TO THE TRUE POINT OF BEGINNING, THENCE CONTINUING  
 ALONG SAID EASTERLY LINE OF PARCEL 1 SOUTH 18°28'20" WEST A DISTANCE OF  
 40.00 FEET; THENCE LEAVING SAID EASTERLY LINE OF PARCEL 1 NORTH 73°25'14"  
 WEST A DISTANCE OF 1181.17 FEET; THENCE NORTH 25°47'23" EAST A DISTANCE OF  
 40.52 FEET; THENCE SOUTH 73°25'14" EAST A DISTANCE OF 109.61 FEET TO THE TRUE  
 POINT OF BEGINNING, CONTAINING 0.10 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 54844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

LEGAL DESCRIPTION FOR PARCEL F

AN EASEMENT FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A CONVEYOR SYSTEM, ALL PERMANENT STRUCTURES WITHIN THIS EASEMENT SHALL BE CONSTRUCTED ABOVE AN ELEVATION WHICH IS 23 FEET ABOVE THE RAIL ELEVATION WITHIN THE EASEMENT. A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "D" AS DESCRIBED IN THE LEGAL DESCRIPTION FOR PARCEL E, E-1, COMMENCING ALONG THE SOUTHWESTERLY BOUNDARY LINE OF PARCEL A, ALONG THE ARC OF A 150' RADIUS CURVE TO THE RIGHT, AN ANGLE OF 101°54'43", A DISTANCE OF 33.93 FEET TO A POINT THAT BEARS SOUTH 54°34'18" EAST, A DISTANCE OF 31.84 FEET FROM THE LAST DESCRIBED POINT, SAID POINT BEING THE POINT OF BEGINNING OF THE 150' RADIUS CURVE TO THE RIGHT, ALONG THE SOUTHWESTERLY BOUNDARY LINE, ALONG THE ARC OF A 359.78 FEET RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 101°54'43", A DISTANCE OF 12.00 FEET TO A POINT THAT BEARS SOUTH 54°34'18" EAST, A DISTANCE OF 31.84 FEET FROM THE LAST DESCRIBED POINT, THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY LINE SOUTH 28°24'17" WEST, A DISTANCE OF 59.08 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF PARCEL A, SAID POINT BEING 100.00 FEET FROM THE POINT OF BEGINNING OF THE 150' RADIUS CURVE, THENCE LEAVING SAID NORTHERLY BOUNDARY LINE NORTH 88°78'36" WEST, A DISTANCE OF 21.04 FEET, THENCE LEAVING SAID NORTHERLY BOUNDARY LINE NORTH 07°31'03" EAST, A DISTANCE OF 82.80 FEET TO

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 34844, MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A PART HEREOF.

CURVE DATA					
No.	DELTA	RADIUS	LENGTH	CORD	CORD BEARING
19	137°1'56"	251.20'	58.80'	58.47'	S 48°48'37" E
20	10°43'59"	358.78'	87.40'	87.30'	S 59°34'08" E
21	057°4'23"	358.78'	33.85'	33.94'	S 26°34'19" E
22	02°48'00"	828.31'	30.73'	30.73'	N 54°33'04" W
23	01°34'43"	358.78'	12.00'	12.00'	S 80°37'52" E
24	000°00'00"	483.85'	8.66'	8.66'	S 84°10'00" E

PARCELS 1, 2, 3, & 4 COMPRISE THE LEASED PERMISES, WHICH TOTAL APPROXIMATELY 63 ACRES

PARCEL 1 LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 23 AND THE NORTH HALF OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLETTE MERIDIAN, SAID CORNER BEING NORTH 88°21'11" WEST A DISTANCE OF 1803.57 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLETTE MERIDIAN; THENCE SOUTH 88°21'11" EAST A DISTANCE OF 228.31 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 34°11'31" EAST A DISTANCE OF 1032.28 FEET TO THE POINT OF BEGINNING OF THE LAST DESCRIBED POINT, THROUGH A CENTRAL ANGLE OF 117°35'31", A DISTANCE OF 124.81 FEET TO A POINT THAT BEARS NORTH 38°54'28" EAST A DISTANCE OF 124.70 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 51°04'04" WEST A DISTANCE OF 110.39 FEET TO A POINT THAT BEARS NORTH 34°11'31" EAST A DISTANCE OF 48.84 FEET TO THE TRUE POINT OF BEGINNING ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 63°50'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 34°11'31" EAST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 88°28'58" EAST A DISTANCE OF 77.81 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 63°50'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 34°11'31" EAST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; SAID POINT HEREIN BEING THE POINT OF BEGINNING OF THE LAST DESCRIBED POINT, THROUGH A CENTRAL ANGLE OF 117°35'31", A DISTANCE OF 306.82 FEET FROM THE LAST DESCRIBED POINT; 54°07'07" EAST A DISTANCE OF 309.82 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 38°47'29" EAST A DISTANCE OF 82.25 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 63°50'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 34°11'31" EAST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 22°55'16" WEST A DISTANCE OF 47.73 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 63°50'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 34°11'31" EAST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; 82°57'57" WEST A DISTANCE OF 809.12 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 78°48'13" WEST A DISTANCE OF 615.93 FEET; THENCE ALONG THE ARC OF A 626.31 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 63°50'21", A DISTANCE OF 720.78 FEET TO A POINT THAT BEARS NORTH 34°11'31" EAST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; 21°16'18" WEST A DISTANCE OF 1032.28 FEET FROM THE LAST DESCRIBED POINT; BEARING NORTH 34°11'31" EAST A DISTANCE OF 48.84 FEET TO THE TRUE POINT OF

EXCEPTING THEREFROM A PARCEL OF LAND DESCRIBED AS FOLLOWS:

COMMENCING AT THE TRUE POINT OF BEGINNING OF PARCEL A AS DESCRIBED ABOVE; THENCE SOUTH 48°24'31" EAST A DISTANCE OF 1148.27 FEET TO THE TRUE POINT OF BEGINNING OF THE EXCLUDED PORTION TO PARCEL I; THENCE NORTH 35°00'00" EAST A DISTANCE OF 819.61 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL D; THENCE SOUTH 18°01'05" WEST A DISTANCE OF 18.01 FEET; THENCE SOUTH 55°00'00" EAST A DISTANCE OF 270.30 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL O; THENCE SOUTH 73°25'14" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL O A DISTANCE OF 49.75 FEET; THENCE LEAVING SAID PARCEL O AND ENTERING PARCEL H, THENCE SOUTH 73°25'14" EAST ALONG THE SOUTHERLY LINE OF PARCEL H A DISTANCE OF 718.84 FEET; THENCE WEST 16°18'18" WEST A DISTANCE OF 1020.24 FEET; THENCE SOUTH 22°20'02" WEST A DISTANCE OF 153.11 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL G CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 13°47'19", A DISTANCE OF 142.90 FEET TO A POINT THAT BEARS SOUTH 29°43'28" EAST A DISTANCE OF 142.98 FEET FROM THE TRUE POINT OF BEGINNING OF PARCEL G; THENCE SOUTH 29°43'28" EAST ALONG A LINE TO A POINT THAT IS 33.50 FEET NORTHEAST AND PARALLEL TO THE SOUTHERLY LINE OF PARCEL I; THENCE ALONG A LINE THAT IS 32.50 FEET NORTHEAST OF AND 32.50 FEET SOUTH OF THE TRUE POINT OF BEGINNING OF PARCEL I TO SAID POINT OF BEGINNING OF PARCEL I; THENCE  
1) THENCE LEAVING THE ARC OF A 39.831 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 62°58'22", A DISTANCE OF 652.65 FEET TO A POINT THAT BEARS SOUTH 74°25'35" WEST A DISTANCE OF 820.29 FEET FROM THE LAST DESCRIBED POINT; THENCE LEAVING THIS POINT AND ENTERING PARCEL J, THENCE SOUTH 74°25'35" WEST ALONG THE ARC OF A 50.810 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 87°33'47", A DISTANCE OF 1011.12 FEET TO A POINT THAT BEARS NORTH 16°18'18" WEST A DISTANCE OF 1020.24 FEET FROM THE LAST DESCRIBED POINT; THENCE LEAVING SAID PARALLEL LINE, SOUTH 48°20'11" EAST A DISTANCE OF 718.84 FEET; THENCE SOUTH 74°28'35" EAST A DISTANCE OF 400.00 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL K; THENCE SOUTH 74°28'35" EAST A DISTANCE OF 26.01 ACRES MORE OR LESS, PARCEL I CONTAINS 38.30 ACRES MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PRIVATE SURVEY NO. 34844,  
MULTNOMAH COUNTY SURVEY RECORDS, AND SAID MAP BY REFERENCE IS MADE A  
PART HEREOF.

[illegible]

PORT OF PORTLAND  
PORTLAND, OREGON

*[Signature]*  
PROJECT MANAGER

1985002

22384-210

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
3-21-99  
*Christopher Vandover*  
OREGON  
JUL 25, 1988  
CHRISTOPHER VANDOVER  
2718  
FOR A-200/2000

DESIGNED BY	R.K. ALDERSEBAES
DRAWN BY	R.K. ALDERSEBAES
CHECKED BY	C.W. VANDERWERF
DATE	FEB., 1999
SCALE	1"=50'

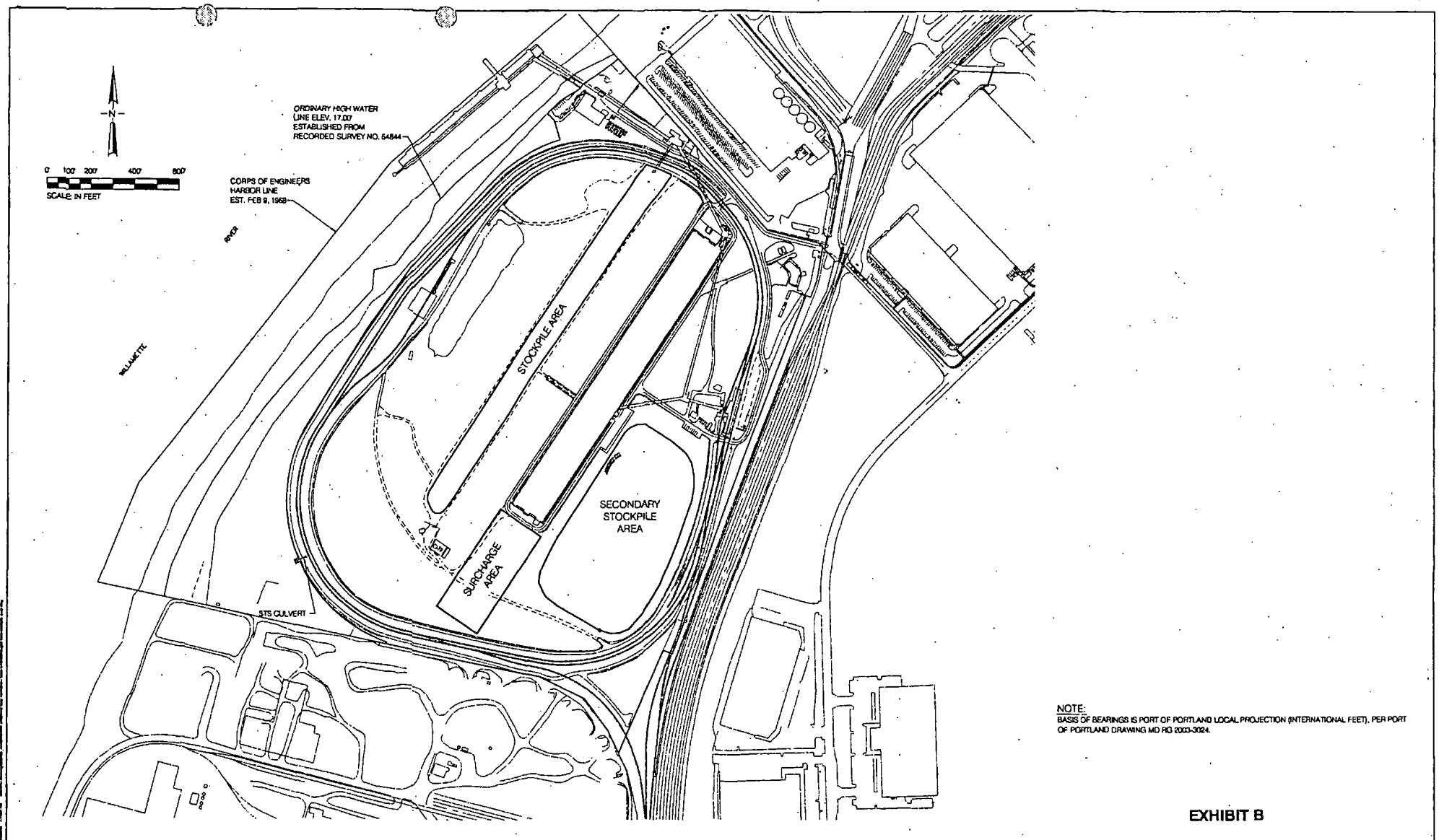
TERMINAL 5

EXHIBIT PLAT  
PORTLAND BULK TERMINAL, LLC

SUBMITTED BY

DRAWING NO.  
TS 1999-1 4/4 (EP)

## Exhibit A1



**NOTE:**  
BASIS OF BEARINGS IS PORT OF PORTLAND LOCAL PROJECTION (INTERNATIONAL FEET), PER PORT  
OF PORTLAND DRAWING MD RG 2003-3024.

**EXHIBIT B**

[illegible]

PORT OF PORTLAND  
PORTLAND, OREGON

OBSERVED BY D. ANDERSON  
 DRAWN BY P. SHIELDS  
 CHECKED BY D. ANDERSON  
 DATE OCT 2005  
 SCALE 1" = 200'

TERMINAL 5

CANPOTEX LEASE AREA  
STOCKPILE AND SURCHARGE AREAS

SUBMITTED BY  
SEBASTIAN DEGENS

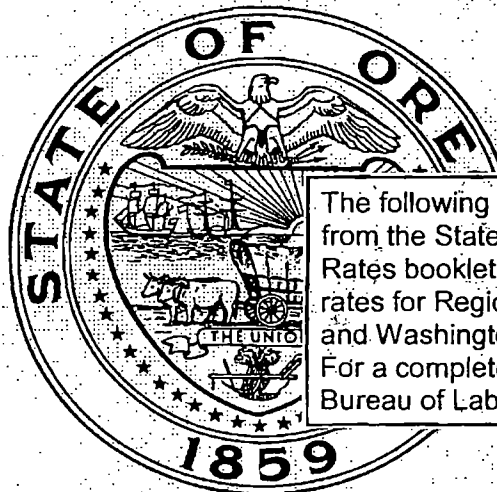
TYPE	DRAWING NO.
EP	T5 2005-3

2/4 (SU-2)

# **PREVAILING WAGE RATES**

for

## **Public Works Contracts in Oregon**



The following pages are a partial excerpt from the State of Oregon Prevailing Wage Rates booklet and contain the current wage rates for Region 2 (Clackamas, Multnomah, and Washington counties) and related text. For a complete booklet, contact the Oregon Bureau of Labor and Industries.



**OREGON BUREAU OF LABOR AND INDUSTRIES**

**Dan Gardner**  
**Commissioner**  
**Bureau of Labor and Industries**

**Effective: July 1, 2005**

**Exhibit C**

**AMENDMENTS/CORRECTIONS TO OREGON DETERMINATION 2005-02  
EFFECTIVE OCTOBER 1, 2005**

TRADE	BASIC HOURLY FRINGE RATE	TRADE	BASIC HOURLY FRINGE RATE
-------	--------------------------------	-------	--------------------------------

**AMENDMENT IN "DEFINITIONS OF COVERED OCCUPATIONS:" PAGE 6**

**5. Cement Masons**

Apply cement, sand, pigment or marble chips to floors, stairways and cabinet fixtures to finish and attain durable and decorative surfaces, according to specifications and drawings. Finish surfaces to remove imperfections from freshly poured concrete walls, roads, walkways and ornamental stone facings of concrete structural products. Include Concrete Rubbers.

Cement Mason includes finishing, **jointing (including decorative and control)**, hand chipping, patching, grouting, end pointing, screed setting, plugging, filling bolt holes, dry packing, setting curb forms, planks, stakes, lines and grades. Also includes grinding of concrete done as preparatory to patching or when done to produce a finished concrete product.

Composition Worker includes installation of epoxy systems and other resinous toppings (with a trowel down component) and power machine operation, **such as concrete power trowels.**

Includes Cement Masons working on suspended, swinging and/or hanging scaffold.

**CORRECTION TO REGION 1 ONLY:**

<b>Power Equipment Operators III:</b>		
Asphalt Paving Equipment: Asphalt Paver Operators, Asphalt Plant Operators, Roller Operators, Screed Operators (any asphalt mix)		
Crane Operation: Hydraulic, Tower, Whirley, Lattice Boom, Dragline & Clamshell, Signal Men		
Floating Construction Equipment: Floating Crane (or "Derrick Barge"), Clamshell or Pile Driver used in conjunction with a construction project, Underwater Equipment Operators (excluding Dredging Operations, which is a separate classification - see "Dredgers").	See Appendix	See Appendix
Guardrail Equipment: Guardrail Punch Operators (all types), Guardrail Punch Oilers, Combination Guardrail Machines, Punches, Augers, etc.		

**AMENDMENTS AND CORRECTIONS TO APPENDIX SECTION: PAGES 46-63**

**LABORERS**

**Zone 1 (Base Rate):**

Group 1	22.05	10.10
Group 2	22.61	10.10
Group 3	23.03	10.10
Group 4	23.39	10.10
Group 5	19.22	10.10

**AMENDMENTS/CORRECTIONS TO OREGON DETERMINATION 2005-02**  
**EFFECTIVE OCTOBER 1, 2005**

TRADE	BASIC HOURLY FRINGE RATE	TRADE	BASIC HOURLY FRINGE RATE
-------	--------------------------------	-------	--------------------------------

**PLUMBERS &  
STEAMFITTERS/PIPEFITTERS**

Area 3 (both)	33.84	16.13
---------------	-------	-------

**POWER EQUIPMENT OPERATORS**

For the Following Metropolitan Counties:

Multnomah, Clackamas, Marion, Yamhill, Washington and Columbia:

See map on page 64 for Zone 1 of this classification.

**ROOFERS**

Area 1

Roofers	24.50	7.78
Handling coal tar pitch	26.95	7.78
Remove fiberglass insulation	26.95	7.78

**TENDERS TO MASON TRADES**

	23.87	10.10
--	-------	-------

**TENDERS TO PLASTERERS**

	22.54	10.10
--	-------	-------

**TELEPHONE / FAX NUMBER CORRECTIONS/AMENDMENTS-**

- Prevailing Wage Rate Coordinator- (971) 673-0839
- Prevailing Wage Rate Fees/Classifications- (971) 673-0838, (971) 673-0852
- Wage and Hour Division- (971) 673-0761
- TDD- (971) 673-0766
- Fax- (971) 673-0769

REGION #2  
Clackamas, Multnomah and Washington Counties

OCCUPATION	PREVAILING WAGE RATE	FRINGE RATE
Asbestos Workers/Insulators	See Appendix	See Appendix
Boilermakers	See Appendix	See Appendix
Bricklayers/Stonemasons	See Appendix	See Appendix
Carpenters 1 & 2	See Appendix	See Appendix
Cement Masons	See Appendix	See Appendix
Divers	See Appendix	See Appendix
Divers' Tenders	See Appendix	See Appendix
Dredgers	\$34.25	\$9.57
Drywall (drywall, wetwall/lathers)	See Appendix	See Appendix
Drywall Tapers	See Appendix	See Appendix
Electricians	See Appendix	See Appendix
Elevator Constructors, Installers and Mechanics	See Appendix	See Appendix
Fence Constructors (not metal) (Laborers Group 1)	See Appendix	See Appendix
Fence Erectors (metal)	\$20.74	\$4.13
Flaggers (Laborers Group 5)	See Appendix	See Appendix
Floor Covering Layers (soft tile, linoleum and carpet)	See Appendix	See Appendix
Glaziers	See Appendix	See Appendix
Hazardous Materials Handlers/Mechanics	See Appendix	See Appendix
Highway and Parking Stripers	See Appendix	See Appendix
Ironworkers	See Appendix	See Appendix
Laborers Group 1	See Appendix	See Appendix
Laborers Group 2	See Appendix	See Appendix
Laborers Group 3	See Appendix	See Appendix
Laborers Group 4	See Appendix	See Appendix
Laborers Group 5	See Appendix	See Appendix
Landscape Laborers/Technicians	\$15.94	\$3.44
Limited Energy Electricians	See Appendix	See Appendix
Line Constructors	See Appendix	See Appendix
Marble Setters	See Appendix	See Appendix
Marine Carpenters	See Appendix	See Appendix
Millwrights; Machine Erectors (Carpenters)	See Appendix	See Appendix
Painters	See Appendix	See Appendix
Plasterers and Stucco Masons (Plasterers)	See Appendix	See Appendix
Plumbers and Steamfitters/Pipefitters (Plumbers)	See Appendix	See Appendix
Power Equipment Operators I:	See Appendix	See Appendix
Auxiliary Equipment: Compressors, Generators, Pumps		
Compactors/Roller Operators: (not asphalt)		
Crushing: Crusher Plant Operators or Oilers		
Drilling: Earth Boring Machine Operators (horizontal & vertical), Directional Drilling		
Fork Lifts: Industrial Lift Truck Operators and Material Handlers		
Repairmen, Heavy Duty (Mechanics, Welders) & Oilers		
Sweepers		

REGION #2  
Clackamas, Multnomah, Washington Counties

OCCUPATION	PREVAILING WAGE RATE	FRINGE RATE
<b>Power Equipment Operators II:</b>		
Asphalt Paving Equipment: Asphalt Paver Operators, Asphalt Plant Operators, Roller Operators, Screed Operators (any asphalt mix)	\$24.82	\$7.25
Asphalt/Concrete Profilers: Roto-Mill, Pavement Profiler Operators, Concrete Planers, Grinder or Grooving Machine Operators	\$24.60	\$6.65
Blade: Blade/Grader Operators		
Bulldozers, Rubber-Tired Scrapers, Material Haulers: Bulldozer Operators, Rubber-Tired Scraper Operators, and Material Haulers (including "Cat wagons", DJB's, Volvos and other similar models)		
Concrete: Batch Plant and or Wet Mix Operators, Concrete Finishing Machine, Brooming, Tining or Wire Mat Machine Operators, Concrete Spreader/Placer Operators, Pump Operators (concrete or grout), Concrete Slip Form Paving Machine (for installing curbs/gutters, guardrails, and/or street paving), Concrete Curing Equipment, Concrete Saw		
Front End Loaders, Hydraulic Hoes, Excavators		
<b>Power Equipment Operators III:</b>		
Crane Operation: Hydraulic, Tower, Whirley, Lattice Boom, Dragline & Clamshell, Signal Men	See Appendix	See Appendix
Floating Construction Equipment: Floating Crane (or "Derrick Barge"), Clamshell or Pile Driver used in conjunction with a construction project, Underwater Equipment Operators (excluding Dredging Operations, which is a separate classification - see "Dredgers").		
Guardrail Equipment: Guardrail Punch Operators (all types), Guardrail Punch Oilers, Combination Guardrail Machines, Punches, Augers, etc.		
Riggers	Receive rate for craft performing operation to which rigging is incidental.	Receive rate for craft performing operation to which rigging is incidental.
Roofers	See Appendix	See Appendix
Sheet Metal Duct Installers; Sheet Metal Workers	See Appendix	See Appendix
Sprinkler Fitters	See Appendix	See Appendix
Telephone and Data Cabling (Limited Energy Electricians)	See Appendix	See Appendix
Tenders to Mason Trades: Brick and Stonemasons	See Appendix	See Appendix
Tenders to Plasterers and Stucco Masons	See Appendix	See Appendix
Tile, Terrazzo, Brick and Marble Finishers	See Appendix	See Appendix
Tile Setter/Terrazzo Workers: Hard Tile Setters	See Appendix	See Appendix
Tree Trimmers (Line Constructors)	See Appendix	See Appendix
Truck Drivers	\$19.32	\$5.72
Welders (Incidental)	Receive rate for craft performing operation to which welding is incidental.	Receive rate for craft performing operation to which welding is incidental.

# **OREGON DETERMINATION 2005-02**

<b>TRADE</b>	<b>BASIC</b>	
	<b>HOURLY</b>	<b>FRINGE</b>
	<b>RATE</b>	

<b>TRADE</b>	<b>BASIC</b>	
	<b>HOURLY</b>	<b>FRINGE</b>
	<b>RATE</b>	

**ASBESTOS WORKERS**      30.24      12.58

Installation of insulation on mechanical systems\* for Thermal and Acoustical purposes, also the installation of fire stop penetrations on electrical and mechanical systems.

**HAZARDOUS MATERIALS  
HANDLERS/MECHANICS**

15.70      7.35

Removal of regulated material on mechanical systems\* which are not going to be scrapped. \*\*

\*Mechanical systems include pipes, boilers, ducts, flues, breaching, grease ducts and acid ducts. This also includes all labor connected with the handling and distribution of materials for these systems.

\*\*The removal of all regulated materials from mechanical systems is exclusively the work of Hazardous Materials Handlers, unless the mechanical systems are going to be scrapped. Laborers do all removal of regulated materials on mechanical systems to be scrapped and any non-mechanical (walls, ceilings, floors, beams, etc.) insulation. They also do loading of any regulated materials after it has been removed, bagged and tagged, as well as cleanup at the removal site and all work done at the disposal site. Persons performing the removal of regulated materials are classified as Group 3 Laborers.

NOTE: Regulated materials are those materials that are regulated for the purpose of protecting the environment or for personal protection by EPA, OSHA, DEQ or Federal OSHA.

**BOILERMAKERS**      27.35      17.36

**BRICKLAYERS/STONEMASONS**

(This trade is tended by "Tenders to Masons")

Area 1      28.92      11.35

(Add \$0.75 per hour to Fringe for Refractory repair work.)

Area 2      27.70      11.18

(Add \$0.75 per hour to Fringe for Refractory repair work.)

**BRICKLAYERS/STONEMASONS (Continued)**

Area 1

Baker	Grant	Multnomah	Wallowa
Benton (a)	Hood River	Polk	Wasco (a)
Clackamas	Lincoln (a)	Sherman	Washington
Clatsop	Linn (a)	Tillamook	Yamhill
Columbia	Marion	Umatilla	
Gilliam	Morrow	Union	

Area 2

Benton (b)	Klamath	Lincoln (b)	Wasco (b)
Coos	Lake	Linn (b)	Wheeler
Curry			

(a) North Half      (b) South Half

**CARPENTERS**

Zone 1 (Base Rate)

Group 1	26.22	12.20
Group 2	26.37	12.20
Group 3	26.72	12.20
Group 4	26.87	12.20
Group 5	26.72	12.20
Group 6	26.87	12.20
Group 7	27.22	12.20

Zone Differential for Carpenters  
(Add to Zone 1 Rate)

Zone 2	.85
Zone 3	1.25
Zone 4	1.70
Zone 5	2.00
Zone 6	3.00
Zone 7	5.00

Zone 1: Projects within 30 miles of city hall in the cities listed below.

Zone 2: More than 30 miles but less than 40 miles.

Zone 3: More than 40 miles but less than 50 miles.

Zone 4: More than 50 miles but less than 60 miles.

Zone 5: More than 60 miles but less than 70 miles.

Zone 6: More than 70 miles but less than 100 miles.

Zone 7: More than 100 miles from the city hall of the employee's home local.

# **OREGON DETERMINATION 2005-02**

TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE	FRINGE
-------	-------------------------	--------	-------	-------------------------	--------

## **CARPENTERS** (Continued)

### Reference Cities for Group 1 and 2 Carpenters

Albany	Goldendale	Medford	Roseburg
Astoria	Grants Pass	McMinnville	St. Helens
Baker City	Hermiston	Newport	Salem
Bend	Hood River	Oregon City	The Dalles
Brookings	Klamath Falls	Ontario	Tillamook
Burns	LaGrande	Pendleton	Vancouver
Coos Bay	Lakeview	Portland	
Corvallis	Longview	Port Orford	
Eugene	Madras	Reedsport	

Zones for Groups 3 and 4 Carpenters are determined by the distance between the project site and either

- 1) The worker's residence; or
- 2) City Hall of a reference city for the appropriate group shown, whichever is closer

### Reference Cities for Group 3 and 4 Carpenters

Eugene	Medford	Portland	Vancouver
Longview	North Bend	The Dalles	

Zones for Groups 5, 6 and 7 Carpenters are determined as follows:

- 1) For those workers who reside within Zone 1 of a reference city below, their zone pay differential shall be computed based upon the distance from the city hall of that city to the project site.
- 2) For those workers who reside nearer to the project than is the city hall of any reference city below, the mileage from their residence to the project may be used in computing their zone pay differential.
- 3) The zone pay differential for all other projects shall be computed from the city hall of Longview, North Bend, or Portland, whichever is closer to the project.

### Reference Cities for Groups 5, 6 and 7

Astoria	Klamath Falls	Newport	Roseburg
Bend	Longview	North Bend	Salem
Eugene	Medford	Portland	The Dalles

## **CARPENTERS** (Continued)

### Group 1

Auto Nailing Machine  
Carpenters  
Form Strippers  
Manhole Builders  
Non-irritating Insulation  
Cabinet & Shelving  
Installers (wood or steel)

### Group 2

Floor Layers & Finishers  
Stationary Power Saw  
Operators  
Wall & Ceiling Insulators  
Irritating Insulation

### Group 3

Millwrights  
Machine Erectors  
Machinists

### Group 4

Millwright/Welders  
(Certified Welders receive  
\$0.25/hour over Grp 3)

### Group 5

Bridge, Dock &  
Wharf Builders  
Piledrivermen

### Group 6

Boom Men

### Group 7

Marine Piledrivers

## **CEMENT MASONS**

(This trade is tended by "Concrete Laborers")

### Zone 1 (Base Rate)

Group 1	24.89	13.05
Group 2	25.39	13.05
Group 3	25.39	13.05
Group 4	25.89	13.05

Group 1 Cement Masons, finishing, hand chipping, patching, grouting, end pointing, screed setting, plugging, filling bolt holes, dry packing, setting curb forms, planks, stakes, lines and grades. Grinding of concrete done as preparatory to patching or when done to produce a finished concrete product.

Group 2 Composition Workers (includes installation of epoxy and other resinous toppings), and Power Machine Operators.

Group 3 Cement Masons working on suspended, swinging and/or hanging scaffold.

OREGON DETERMINATION 2005-02			
TRADE	BASIC HOURLY RATE	FRINGE	TRADE
			BASIC HOURLY RATE
			FRINGE

#### CEMENT MASONS (Continued)

Group 4 Cement Masons performing work of both Group 2 and Group 3 at the same time.

#### Zone Differential for Cement Masons

(Add to Zone 1 Rate)

Zone 2	.65
Zone 3	1.15
Zone 4	1.70
Zone 5	3.00

Zone 1: Projects within 30 miles of city hall in the cities listed below.

Zone 2: More than 30 miles, but less than 40 miles.

Zone 3: More than 40 miles, but less than 50 miles.

Zone 4: More than 50 miles, but less than 80 miles.

Zone 5: More than 80 miles.

#### Reference Cities

Bend	Eugene	Portland	The Dalles
Corvallis	Medford	Salem	Vancouver

#### DIVERS & DIVERS' TENDERS

Divers	62.92	12.20
Divers' Tenders	27.68	12.20

1) For those workers who reside within a reference city below, their zone pay shall be computed from the city hall of the city wherein they reside.

2) For those workers who reside nearer to a project than is the city hall of any reference city below, the mileage from their residence may be used in computing their zone pay differential.

3) The zone pay for all other projects shall be computed from the city hall of Portland.

#### Zone Differential for Divers/Divers' Tenders

(Add to Zone 1 Rate)

Zone 2	.85
Zone 3	1.25
Zone 4	1.70

#### DIVERS & DIVERS' TENDERS (Continued)

Zone 5	2.00
Zone 6	3.00
Zone 7	5.00

Zone 1: Projects within 30 miles of city hall in the cities listed below.

Zone 2: More than 30 miles, but less than 40 miles.

Zone 3: More than 40 miles, but less than 50 miles.

Zone 4: More than 50 miles, but less than 60 miles.

Zone 5: More than 60 miles, but less than 70 miles.

Zone 6: More than 70 miles, but less than 100 miles.

Zone 7: More than 100 miles from the city hall of the employee's home local.

#### Reference Cities for Divers/Divers' Tenders

Astoria	Klamath Falls	Newport	Roseburg
Bend	Longview	North Bend	Salem
Eugene	Medford	Portland	The Dalles

Depth Pay and Enclosure Pay are added to the Divers' Basic Hourly Rate to obtain the Total Hourly Rate for the Diver.

Basic Hourly Rate	+	Hourly Depth Pay	+	Hourly Enclosure Pay	=	Divers' Total Hourly Pay
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#### Divers' Depth Pay:

#### Depth of Dive      Hourly Depth Pay

50 - 100 ft.	[(Total ft- 50) x \$1.00]/hr.
100 - 150 ft.	\$ 50 + [(Total ft-100) x \$1.50]/hr.
100 - 200 ft.	\$125 + [(Total ft-150) x \$2.00]/hr.

Divers' Enclosure Pay (working without vertical escape):

#### Distance Traveled

#### In the Enclosure      Hourly Enclosure Pay

5 - 50 ft.	\$.50/hr.
50 - 100 ft.	\$.63/hr.
100 - 150 ft.	\$2.13/hr.
150 - 200 ft.	\$4.63/hr.
200 - 300 ft.	\$4.63 + [(total ft-200) X \$.05]/hr.
300 - 450 ft.	\$9.63 + [(total ft-300) X \$.10]/hr.
450 - 600 ft.	\$24.63 + [(total ft - 450) X \$.20]/hr.

OREGON DETERMINATION 2005-02					
TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE	FRINGE

### DRYWALL/WETWALL

Drywall (Acoustical and Drywall Applicator)	25.51	12.91
Wetwall (Lather)	25.81	12.61

### ELECTRICIANS

#### Area 1

Electricians	24.51	9.13
Cable Splicers	26.96	9.25

#### Area 2

Electricians	29.90	13.33
Cable Splicers	31.40	13.37

#### Area 3

Electricians	28.15	11.84
--------------	-------	-------

#### Area 4

Electricians	30.50	12.77
Cable Splicers	33.55	12.86
Electrical Material Handler	14.03	6.22

#### Area 5

Electricians	31.35	13.99
Cable Splicers	31.60	14.00
Electrical Material Handler	17.71	9.18

#### Zone Pay for Area 5 Electricians (Add to Basic Hourly Rate)

Zone 1	31-50 miles	1.00
Zone 2	51-70 miles	3.00
Zone 3	71-90 miles	5.00
Zone 4	91 or more	8.50

There shall be a 30-mile free zone from downtown Portland City Hall and a similar 15-mile free zone around the following cities:

Astoria    Hood River    Seaside    The Dalles  
Tillamook

Further, the free zone at the Oregon coast shall extend along Hwy 101 west to the ocean Hwy 101 east 10 miles if not already covered by the above 15-mile free zone.

### ELECTRICIANS (Continued)

#### Area 6

Electricians	27.35	11.42
Cable Splicers	27.35	11.42

#### Zone Pay for Area 6 Electricians (Add to Basic Hourly Rate)

Zone 1	0-20 miles	0.00
Zone 2	21-30 miles	1.00
Zone 3	31-40 miles	2.80
Zone 4	41-50 miles	4.50
Zone 5	51-60 miles	6.30
Zone 6	60 or more	9.00

There shall be a 20-mile free zone from the downtown Post Office in Grants Pass, Klamath Falls, Medford, and Roseburg and a similar 5-mile free zone around the cities of Alturas and Yreka, California.

#### Reference Counties

<u>Area 1</u>	<u>Area 2</u>	<u>Area 3</u>
Malheur	Baker	Coos
	Gilliam	Curry
	Grant	Lincoln
	Morrow	Douglas (a)
	Umatilla	Lane (a)
	Union	
	Wallowa	
	Wheeler	
<u>Area 4</u>	<u>Area 5</u>	<u>Area 6</u>
Benton	Clackamas	Harney
Crook	Clatsop	Jackson
Deschutes	Columbia	Josephine
Jefferson	Hood River	Klamath
Lane (b)	Multnomah	Lake
Linn	Sherman	Douglas (b)
Marion	Tillamook	
Polk	Wasco	
Yamhill (c)	Washington	
	Yamhill (d)	

(a) Those portions lying west of a line running North and South from the NE corner of Coos County to the SE corner of Lincoln County

OREGON DETERMINATION 2005-02				
TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE

### ELECTRICIANS (Continued)

(b) Those portions lying east of a line running North and South from the NE corner of Coos County to the SE corner of Lincoln County.

(c) South half

(d) North half

### ELEVATOR CONSTRUCTORS

#### Area 1

Mechanic	37.09	12.12
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#### Area 2

Mechanic	37.26	11.77
----------	-------	-------

#### Reference Cities

#### Area 1

Baker  
Umatilla  
Union  
Wallowa

#### Area 2

All  
Remaining  
Counties

### FLAGGERS See Laborers, Group 5

<u>GLAZIERS</u>	28.84	10.69
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Add \$1.00 to base rate if safety belt is required by State safety regulations.

Add \$4.00 to base rate for work done from a non-motorized single-man bosun chair.

### HIGHWAY/PARKING STRIPERS

	23.99	8.05
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<u>IRONWORKERS</u>	28.47	13.30
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Structural, Reinforcing, Ornamental, Riggers, Signal men

### LABORERS

#### Zone 1 (Base Rate):

Group 1	21.58	9.65
Group 2	22.12	9.65
Group 3	22.53	9.65

### LABORERS (Continued)

Group 4	22.88	9.65
Group 5	18.83	9.65

Note: A Hazardous Waste Removal Differential must be added to the base rate if work is performed inside the boundary of a Federally Designated Hazardous Waste Site. A Group 1 base rate is used for General Laborer on such a site. For further information on this, call the Prevailing Wage Rate Coordinator at (503) 731-4709.

#### Zone Differential for Laborers (Add to Zone 1 Rate)

Zone 2	.65
Zone 3	1.15
Zone 4	1.70
Zone 5	2.75

Zone 1 - Projects within 30 miles of city hall in the cities listed below.

Zone 2 - More than 30 miles but less than 40 miles.

Zone 3 - More than 40 miles but less than 50 miles.

Zone 4 - More than 50 miles but less than 80 miles.

Zone 5 - More than 80 miles.

#### Reference Cities

Albany	Burns	Hermiston	Portland
Astoria	Coos Bay	Klamath Falls	Roseburg
Baker City	Eugene	Medford	Salem
Bend	Grants Pass	Pendleton	The Dalles

#### Group 1

Asphalt Spreader	Leverman or Aggregate
Batch Weighman	Spreader (d)
Broomer	Loading Spotter
Brush Burner/Cutter	Material Yard Man (e)
Car & Truck Loader	Powderman Assistant
Carpenter Tender	Railroad Track Laborer
Change-House Man	Ribbon Setter (f)
Chipper Operator (a)	Rip Rap Man (Hand Placed)
Choker Setter	Road Pump Tender/Mover
Clean up Laborer ***	Scaffold Tender
Curing, Concrete	Sewer Laborer
Demolition, wrecking,	Signalman
moving (building &	Skipman
industrial)***	Sloper
Driller Assistant	Sprayman
Dry-shack Man	Stake Chaser
Dumpers, road oiling crew	Stockpiler

OREGON DETERMINATION 2005-02					
TRADE	BASIC		TRADE	BASIC	
	HOURLY	FRINGE		HOURLY	FRINGE
	RATE			RATE	

### LABORERS (Continued)

#### Group 1 (Continued)

Dumpman for Grading crew	Tie Back Shoring
Elevator Feeder	Timber Faller/Bucker (Hand Labor)
Erosion Control Specialist	Toolroom Man (Job Site)
Fine Grader	Traffic Control Supervisor (Certified)
Form Stripper (b)	Weight-Man Crusher (g)
General Laborer ***	Wood Fence Builder
Guardrail, Median Rail (c)	

- (a) Pittsburg or similar types
- (b) Not swinging stages
- (c) Reference Post, Guide Post, or Right of Way Marker
- (d) Flaherty, and similar types
- (e) Including electrical
- (f) Including steel forms
- (g) Aggregate when used

#### Group 2

Applicator (a)	Handler/Mixer (f)
Brush Cutter (b)	Doping & Wrapping Pipe
Burner	Post Hole Digger, Air, Gas or Electric
Choker Splicer	Power Tool Operator (g)
Clary Power Spreader (c)	Pressure Washer
Clean up Nozzleman - Green Cutter (d)	Ribbon Setter (head)
Concrete Laborer	Rip Rap Man (head) (hand placed)
Concrete Power Buggyman	Sand Blasting (wet)
Crusher Feeder	Stake Setter
Demolition/Wrecking (e)	Tamper
Gunite Nozzleman Tender	
Gunite or Sandblasting Pot Tender	

- (a) Including Pot Tender for same, applying protective material by hand or nozzle on utility lines or storage tanks on project.
- (b) Power Saw
- (c) And similar types of spreaders
- (d) Concrete, rock, etc.
- (e) Charred Materials
- (f) Of all materials of an irritating nature including cement and lime
- (g) Includes, but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers

#### Group 3

Asbestos Removal	Power Saw Operator (c)
Bit Grinder	Sand Blasting (dry)

### LABORERS (Continued)

#### Group 3 (Continued)

Concrete Saw Operator	Sewer Timberman
Drill Doctor	Track Liner (d)
Drill Operator (a)	Tugger Operator
Laser Beam (b)	Vibrating Screed
Manhole Builder	Vibrator (all)
Mold Remediation	Water Blaster
Nipper & Timberman	Welder
Nuclear Plant Worker - Lead Shield	

- (a) Air Tracks, Cat Drills, Wagon Drills, Rubber-mounted Drills, and other similar types.
- (b) Pipe laying applicable when employee assigned to move, set up align Laser Beam
- (c) Bucking and falling
- (d) Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks

#### Group 4

Asphalt Raker	Pipe Layer (all)
Gunite Nozzleman	Powderman
Grade Checker	Pumpcrete Nozzleman
High Scaler, Stripper, Driller (a)	Shield Operator
Laser Beam (Tunnel), applicable when employee assigned to move, set up, align laser beam	Tunnel Bull Gang (above ground)
Loop Installation	Tunnel Chuck Tender
Motorman-Dinky	Tunnel Miner
Locomotive	Tunnel Mucker/Brakeman/Concrete Crew/Bull Gang (underground)
	Tunnel Powderman

- (a) Covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down, or sloping and stripping.

#### Group 5

Clean up Laborer (building only)***
Confined Space (hole) Watch
Fire Watch
Flagger

\*\*\*Laborers can tear off roofs, clean up or handle roofing material only when at least one new story is added or in demolition work, where no re-roofing will occur.

# OREGON DETERMINATION 2005-02

## TRADE

BASIC  
HOURLY RATE FRINGE

## TRADE

BASIC  
HOURLY RATE FRINGE

### LIMITED ENERGY ELECTRICIANS

May only be used for electrical work not exceeding 100 va in Class II and III installations (as defined in Article 725 of the National Electrical Code):

Area 1	24.51	9.13
Area 2	25.30	10.01
Area 3	19.81	9.65
Area 4	23.10	8.59
Area 5	25.50	10.47
Area 6	21.00	9.18

### Zone Pay for Area 6 Limited Energy Electricians (Add to Basic Hourly Rate)

Zone 1	0-20 miles	0.00
Zone 2	21-30 miles	1.00
Zone 3	31-40 miles	2.80
Zone 4	41-50 miles	4.50
Zone 5	51-60 miles	6.30
Zone 6	60 or more	9.00

There shall be a 20-mile free zone from the downtown Post Office in Grants Pass, Klamath Falls, Medford, and Roseburg and a similar 5-mile free zone around the cities of Alturas and Yreka, California.

### Area 1

Malheur

### Area 2

Baker  
Gilliam  
Grant  
Morrow  
Umatilla  
Union  
Wallowa  
Wheeler

### Area 3

Coos  
Curry  
Douglas (a)  
Lane (a)  
Lincoln

### Area 4

Benton  
Crook  
Deschutes  
Jefferson  
Lane (b)  
Linn  
Marion  
Polk  
Yamhill (c)

### Area 5

Clackamas  
Clatsop  
Columbia  
Hood River  
Multnomah  
Sherman  
Tillamook  
Wasco  
Washington  
Yamhill (d)

### Area 6

Harney  
Jackson  
Josephine  
Klamath  
Lake  
Douglas (b)

### LIMITED ENERGY ELECTRICIANS (Continued)

- a) Those portions lying west of a line running North and South from the NE corner of Coos County to the SE corner of Lincoln County.
- (b) Those portions lying east of a line running North and South from the NE corner of Coos County to the SE corner of Lincoln County.
- (c) South half
- (d) North half

### LINE CONSTRUCTION

### Area 1

Group 1	39.48	11.28
Group 2	35.25	11.12
Group 3	20.98	8.75
Group 4	30.32	9.18
Group 5	26.44	9.02
Group 6	24.68	8.96

### Area 2

Cable Splicer	32.46	10.24
Journeyman Lineman	29.41	9.97
Line Equip. Oper.	24.72	9.56
Groundman	17.77	7.75

### Area 1 All counties except Malheur County

### Area 2 Malheur County

### Group 1

Cable Splicer  
Leadman Pole Sprayer  
Pole Sprayer

### Group 2

Certified Lineman  
Welder  
Heavy Line Equipment Man

### Group 3

Tree Trimmer

Journeyman Lineman  
Welder

### Group 4

Line Equipment Man

Journeyman Lineman  
Lineman  
Heavy Equipment Man  
Pole Sprayer

### Group 5

Head Groundman  
Jackhammer Man  
Powderman

### Group 6

Groundman

OREGON DETERMINATION 2005-02					
TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE	FRINGE

#### MARBLE SETTERS (Includes Granite)

(This trade is tended by "Tile, Terrazzo, Brick & Marble Finishers")

29.92 11.35

#### PAINTERS & DRYWALL TAPERS

Commercial Painting 17.43 6.53

Includes painting upon or within any structure, facility, surface or item which is established or constructed for conducting commerce, profit or non-profit.

Industrial Painting 18.03 6.53

Includes painting upon or within any structure, facility, surface or item which is established or constructed for conducting industrial related commerce. Industrial related commerce relates to manufacturing plants, process plants, tank farms, factories, ship yards, and other similar structures all of which contain excessive use of metal components in their construction.

Add \$0.75 to base rate for work over 60 ft. high on swing stage, mechanical climber, spider or bucket truck for both commercial and industrial painting.

Drywall Taper 28.31 10.50

#### PLASTERERS

(This trade is tended by "Tenders to Plasterers")

Nozzleman 28.49 8.28

Swinging Scaffold 27.49 8.28

All Other Work 26.49 8.28

#### PLUMBERS & STEAMFITTERS/PIPEFITTERS

Area 1 (Both) 23.99 8.98

Add \$2.21 per hour to basic hourly rate if it is possible for worker to fall 30 ft. or more, or if required to wear a fresh-air mask or similar equipment for 2 hours or more.

#### PLUMBERS & STEAMFITTERS/PIPEFITTERS

(Continued)

Zone Differential for Area 1 Plumbers & Steamfitters/Pipefitters  
(Add to Base Rate)

Zone 1 2.50 per hour  
Zone 2 3.50 per hour  
Zone 3 5.00 per hour

#### Reference Cities for Area 1:

Boise, Idaho  
Twin Falls, Idaho

With distances in Zone 6, 100 miles and beyond, there shall be a minimum of one hundred fifty-one dollars and sixty cents (\$151.60) per week or thirty dollars and thirty-two cents (\$30.32) per day worked.

Area 2 (Both) 32.57 16.61  
Area 3 (Both) 33.16 14.81

<u>Area 1</u>	<u>Area 2</u>	<u>Area 3</u>
Baker	Grant (b)	All Remaining
Harney (a)	Morrow	Counties
Malheur	Umatilla	
	Union	
	Wallowa	

(a) Except Northwest Portion  
(b) Except Southwest Portion

#### POWER EQUIPMENT OPERATORS

Zone 1 (Base Rate)

Group 1 30.44 9.95  
Group 2 29.14 9.95  
Group 3 28.34 9.95  
Group 4 27.78 9.95  
Group 5 27.15 9.95  
Group 6 24.66 9.95

Note: A Hazardous Waste Removal Differential must be added to the base rate if work is performed inside the boundary of a Federally Designated Waste Site. For information on this differential, call the Prevailing Wage Rate Coordinator at (503) 731-4709.

# **OREGON DETERMINATION 2005-02**

**TRADE**

**BASIC  
HOURLY RATE FRINGE**

**TRADE**

**BASIC  
HOURLY RATE FRINGE**

## **POWER EQUIPMENT OPERATORS**

(Continued)

### Zone Rates

Zone 2	1.50
Zone 3	3.00

### For the Following Metropolitan Counties:

Multnomah, Clackamas, Marion, Yamhill, Washington and Columbia:

See map on page 66 for Zone 1 of this classification

(A) All jobs or projects located in Multnomah, Clackamas and Marion counties, west of the western boundary of Mt. Hood National Forest and west of mile post 30 on Interstate 84 and west of mile post 30 on State Hwy 26 and west of mile post 30 on Hwy 22 and all jobs located in Yamhill County, Washington County and Columbia County shall receive Zone 1 pay for all classifications.

(B) All jobs or projects located in the area outside the identified boundary above, but less than 50 miles from the Portland City Hall shall receive Zone 2 pay for all classifications.

(C) All jobs or projects located more than 50 miles from the Portland City Hall, but outside the identified border above, shall receive Zone 3 pay for all classifications.

### For the Following Cities:

Albany; Bend; Coos Bay; Eugene; Grants Pass; Klamath Falls; Medford and Roseburg:

(A) All jobs or projects located within 30 miles of the respective city hall of the above mentioned cities shall receive Zone 1 pay for all classifications.

(B) All jobs or projects located more than 30 miles and less than 50 miles from the respective city hall of the above mentioned cities shall receive Zone 2 for all classifications.

## **POWER EQUIPMENT OPERATORS**

(Continued)

(C) All jobs or projects located more than 50 miles from the respective city hall of the above mentioned cities shall receive Zone 3 pay for all classifications.

### **ASPHALT**

Group

- 6 Plant Oiler
- 6 Plant Fireman
- 6 Pugmill Operator (any type)
- 6 Truck mounted asphalt spreader, w/screed
- 6 Raker
- 5 Extrusion Machine Operator
- 5 Roller Operator (any asphalt mix)
- 5 Asphalt Burner and Reconditioner Operator (any type), 84
- 5 Roto-Mill, pavement profiler, ground man
- 4 Screed Operator
- 4 Asphalt Paver Operator
- 4 Diesel-Electric Engineer, Plant
- 4 Roto-Mill, pavement profiler, operator, under six (6) ft. lateral cut
- 2 Roto-Mill, pavement profiler, operator, six (6) ft. lateral cut and over
- 2 Asphalt Plant Operator (any type)

### **BLADE**

Group

- 4 Blade Operator
- 4 Blade Operator, Finish
- 4 Blade Operator, externally controlled by electronic, mechanical, Hydraulic means
- 4 Blade Operator, multi-engine
- 2 Auto Grader or "Trimmer" Operator (Grade Checker required)
- 2 Blade Operator, Robotic

### **BULLDOZERS**

Group

- 5 Bulldozer Operator, 20,000 lbs or less, or 100 horse or less
- 4 Bulldozer Operator, over 20,000 lbs and more than 100 horse up to 70,000 lbs
- 4 Drill-Cat Operator
- 4 Side-Boom Operator
- 4 Cable-Plow Operator (any type)

# OREGON DETERMINATION 2005-02

TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE	FRINGE
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## POWER EQUIPMENT OPERATORS

(Continued)

### BULLDOZERS (Cont.)

#### Group

- 3 Bulldozer Operator, over 70,000 lbs up to and including 120,000 lbs
- 2 Bulldozer Operator, over 120,000 lbs and above
- 2 Bulldozer Operator, twin engine
- 2 Bulldozer Operator (Tandem, Quad-nine, D-10, D-11, and similar type)
- 2 Bulldozer Robotic Equipment (any type)

### CLEARING

#### Group

- 4 Log Skidder
- 4 Chipper
- 4 Incinerator
- 4 Stump Splitter (loader mounted or similar type)
- 4 Stump Grinder (loader mounted or similar type)
- 4 Tub Grinder (used for wood debris)
- 4 Land Clearing Machine (track mounted forestry mowing & grinding machine)
- 4 Hydro Axe (loader mounted or similar type)

### COMPRESSORS

#### Group

- 6 Compressor Operator (any power) under 1,250 cu. ft. total capacity
- 5 Compressor Operator (any power), over 1,250 cu. ft. total capacity

### COMPACTORS – Self Propelled

#### Group

- 5 Compactor Operator, including vibratory
- 5 Wagner Pactor Operator or similar type (without blade)
- 4 Compactor Operator, with blade
- 4 Compactor Operator, multi-engine
- 4 Compactor Operator, Robotic

### CONCRETE

#### Group

- 6 Plant Oiler

## POWER EQUIPMENT OPERATORS

(Continued)

### CONCRETE (Cont.)

#### Group

- 6 Assistant Conveyor Operator
- 6 Conveyor Operator
- 6 Mixer Box Operator (C.T.B., dry batch, etc.)
- 6 Cement Hog Operator
- 6 Concrete Saw Operator (walk behind)
- 6 Concrete Curing Machine Operator (riding type)
- 6 Wire Mat or Brooming Machine Operator
- 5 Combination Mixer and Compressor Operator, gunite work
- 5 Concrete Batch Plant Quality Control Operator
- 5 Belcrete Operator
- 5 Pumpcrete Operator (any type)
- 5 Pavement Grinder and/or Grooving Machine Operator (riding type)
- 5 Cement Pump Operator, Fuller Kenyon and similar
- 5 Concrete Pump Operator
- 5 Grouting Machine Operator
- 5 Concrete Mixer Operator, single drum, under five bag capacity
- 5 Concrete Mixer Operator, single drum, five bag capacity and over
- 5 Cast in place pipe laying machine
- 5 Maginnis Internal Full Slab Vibrator Operator
- 5 Concrete Finishing Machine Operator, Clary, Johnson, Bidwell, Burgess, Bridge deck or similar type
- 5 Curb Machine Operator, Mechanical Berm, Curb and/or Curb and Gutter
- 5 Concrete Joint Machine Operator
- 5 Concrete Planer Operator
- 5 Tower Mobile Operator
- 5 Power Jumbo Operator setting slip forms, etc., in tunnels
- 5 Slip Form Pumps, power driven hydraulic lifting device for concrete Forms
- 5 Concrete Paving Machine Operator
- 5 Concrete Finishing Machine Operator
- 5 Concrete Spreader Operator
- 5 Barrel Truck Driver
- 4 Mixer Mobile Operator
- 4 Screed Operator
- 4 Concrete Cooling Machine Operator
- 4 Concrete Paving Road Mixer
- 4 Concrete Breaker

# OREGON DETERMINATION 2005-02

TRADE

BASIC  
HOURLY FRINGE  
RATE

TRADE

BASIC  
HOURLY FRINGE  
RATE

## POWER EQUIPMENT OPERATORS

(Continued)

### CONCRETE (Cont.)

#### Group

- 4 Reinforced Tank Banding Machine (K-17 or similar types)
- 4 Laser Screed
- 2 Batch Plant and/or Wet Mix Operator, one and two drum
- 2 Automatic Concrete Slip Form Paver Operator
- 2 Concrete Canal Line Operator
- 2 Concrete Profiler, Diamond Head
- 1 Batch Plant and/or Wet Mix Operator, three units or more

### CRANE

#### Group

- 6 Tugger or Coffin Type Hoist Operator
- 6 Truck Crane Oiler-Driver
- 6 Oiler
- 6 Fireman, all equipment
- 6 A-Frame Truck Operator, single drum
- 5 Hoist Operator, single drum
- 5 Helicopter Hoist Operator
- 5 Elevator Operator
- 5 Boom Truck Operator
- 5 A-Frame Truck Operator, double drum
- 4 Lift Slab Machine Operator
- 4 Hoist Operator, two (2) drum
- 4 Hoist Operator, three (3) or more drums
- 4 Hoist Operator, stiff leg, guy derrick or similar type, fifty (50) ton and over
- 4 Derrick Operator, under 100 tons (two operators required when swing control is remote from hoist)
- 4 Chicago Boom and similar types
- 4 Cherry Picker or similar type crane-hoist, five (5) ton capacity or less
- 4 Cableway Operator, up to twenty-five (25) ton
- 4 Bridge Crane Operator, Locomotive, Gantry, Overhead
- 4 Boom type lifting device, five (5) ton capacity or less
- 2 Cableway Operator, twenty-five (25) ton and over
- 1 Helicopter Operator, when used in erecting work

## POWER EQUIPMENT OPERATORS

(Continued)

### HYDRAULIC CRANE OPERATOR

#### Group

- 5 Hydraulic Boom Truck Operator, Pittman
- 4 Hydraulic Crane Operator, under fifty (50) tons
- 3 Hydraulic Crane Operator, fifty (50) tons through 89 tons (with luffing or tower attachment takes Group 2 classification)
- 2 Hydraulic Crane Operator, ninety (90) tons through 199 tons (with luffing or tower attachment takes Group 1 classification)
- 1 Hydraulic Crane Operator, two hundred (200) tons and over (with luffing or tower attachment shall receive the Group 1 classification plus 5%)

### TOWER/WHIRLEY OPERATOR

#### Group

- 2 Tower Crane Operator
- 2 Whirley Operator, under ninety (90) ton
- 1 Whirley Operator, ninety (90) ton and over

### LATTICE BOOM CRANE OPERATOR

#### Group

- 4 Lattice Boom Crane Operator, under fifty (50) tons
- 3 Lattice Boom Crane Operator, fifty (50) tons through 89 tons, (& less than 150 ft. boom)
- 2 Lattice Boom Crane Operator, ninety (90) tons through 199 tons, (and/or 150 ft-200 ft boom)
- 1 Lattice Boom Crane Operator, two hundred (200) tons through 299 tons, (and/or over 200 ft. boom)
- 1 Lattice Boom Crane Operator, two hundred (200) tons through 299 tons, with over 200 ft. boom shall receive the Group 1 classification rate plus 5%
- 1 Lattice Boom Crane Operator, three hundred (300) tons through 399 tons shall receive Group 1 classification rate plus 5%
- 1 Lattice Boom Crane Operator, three hundred (300) tons through 399 tons, with over 200 ft. boom shall receive the Group 1 classification rate plus 10%

**OREGON DETERMINATION 2005-02**

TRADE	BASIC HOURLY FRINGE RATE	TRADE	BASIC HOURLY FRINGE RATE
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**POWER EQUIPMENT OPERATOR**

(Continued)

**LATTICE BOOM CRANE OPERATOR (Cont.)**

Group

- 1 Lattice Boom Crane Operator, four hundred (400) tons and over, shall receive the Group 1 classification rate plus 10%

**CRUSHER**

Group

- 6 Crusher Oiler
- 6 Crusher Feeder
- 4 Generator Operator
- 4 Diesel-Electric Engineer
- 4 Grizzly Operator
- 2 Crusher Plant Operator

**DRILLING**

Group

- 6 Drill Assistant
- 6 Directional Drill Locator
- 6 Auger Oiler
- 5 Directional Drill Operator less than 20,000 LBS. pullback
- 5 Churn Drill and Earth Boring Machine Operator
- 4 Drill Doctor
- 4 Boring Machine Operator
- 4 Driller, Percussion, Diamond, Core, Cable, Rotary and similar type
- 4 Cat Drill (John Henry)
- 4 Directional Drill Operator over 20,000 LBS pullback

**FLOATING EQUIPMENT**

Group

- 6 Deckhand
- 6 Boatman
- 5 Fireman
- 4 Piledriver Operator (not crane type)
- 4 Licensed Boatman
- 4 Jack Operator, elevating barges, Barge Operator, self-unloading
- 4 Floating Crane (derrick barge) Operator, less than 30 ton
- 4 Floating Clamshell, etc. Operator, under 3 cu. yd.
- 4 Diesel-Electric Engineer

**POWER EQUIPMENT OPERATORS**

(Continued)

**FLOATING EQUIPMENT (Cont.)**

Group

- 2 Floating Crane (derrick barge) Operator, 30 ton but less than 150 ton
- 2 Floating Clamshell, etc. Operator, 3 cu. yd. and over
- 1 Floating Crane, 150 ton and over but less than 250 ton
- 1 Floating Crane, two hundred fifty (250) ton and over shall receive the Group 1 classification rate plus 5%
- 1 Floating Crane, three hundred fifty (350) ton and over shall receive the Group 1 classification rate plus 10%

**FORK LIFT**

Group

- 6 Self-Propelled Scaffolding Operator Construction job site (excluding working platform)
- 6 Fork Lift or Lumber Stacker Operator, construction job site
- 6 Ross Carrier Operator, construction job site
- 5 Lull Hi-Lift Operator or similar type
- 5 Fork Lift, over five (5) ton and/or Robotic
- 3 Rock Hound Operator

**GENERATORS**

Group

- 4 Generator Operator
- 4 Diesel-Electric Engineer

**GUARDRAIL EQUIPMENT**

Group

- 6 Oiler
- 6 Oiler, combination guardrail machines
- 6 Guardrail Punch Oiler
- 6 Auger Oiler
- 4 Guardrail Punch Operator (all types)
- 4 Guardrail Auger Operator (all types)
- 4 Combination Guardrail machines, i.e. Punch, Auger, etc.

# OREGON DETERMINATION 2005-02

TRADE

BASIC  
HOURLY FRINGE  
RATE

TRADE

BASIC  
HOURLY FRINGE  
RATE

## POWER EQUIPMENT OPERATORS

(Continued)

### HEATING PLANT

Group

- 6 Temporary Heating Plant Operator
- 4 Surface Heater and Planer Operator

### HYDRAULIC HOES-EXCAVATORS

Group

- 5 Hydraulic Backhoe Operator, wheel type (Ford, John Deere, Case type)
- 5 Hydraulic Backhoe Operator, track type up to and including 20,000 LBS
- 4 Robotic Hydraulic Backhoe Operator, track and wheel type up to and including 20,000 LBS. with any or all attachments.
- 4 Excavator Operator over 20,000 LBS. through 80,000 LBS.
- 3 Excavator Operator over 80,000 LBS. through 130,000 LBS
- 2 Excavator Operator over 130,000 LBS and above

### LOADERS

Group

- 6 Bucket Elevator Loader Operator, Barber-Greene and similar types
- 6 Bobcat, Skid Steer (under 1 yard)
- 5 Loaders, rubber-tired type, less than 25,000 LBS
- 5 Elevating Loader Operator, Athey and similar types
- 5 Elevating Grader Operator, Tractor towed requiring Operator or Grader
- 4 Loader Operator, front end and overhead, 25,000 LBS and less than 60,000 LBS
- 4 Elevating Grader Operator by Tractor Operator, Sierra, Euclid or similar types
- 4 Belt Loaders Kolman and Ko Cal types
- 3 Loader Operator, 60,000 LBS and less than 120,000 LBS
- 2 Loader Operator, 120,000 LBS and above

### OILERS

Group

- 6 Material Handler
- 6 Oiler
- 6 Guardrail Punch Oiler

## POWER EQUIPMENT OPERATORS

(Continued)

### OILERS (Cont.)

Group

- 6 Truck Crane Oiler-Driver
- 6 Auger Oiler
- 6 Grade Oiler, required to check grade
- 6 Grade Checker
- 5 Service Oiler (Greaser)
- 4 Grade Setter/layout from plans

### PILEDRIVERS

Note: Crane rates apply when driving or pulling piling

Group

- 4 Hammer Operator
- 4 Piledriver Operator (not crane type)

### PIPE LINE - Sewer Water

Group

- 6 Tar Pot Fireman
- 6 Tar Pot Fireman (power agitated)
- 6 Hydraulic Pipe Press Operator
- 5 Hydra Hammer or similar types
- 5 Pavement Breaker Operator
- 4 Pipe Cleaning Machine Operator
- 4 Pipe Doping Machine Operator
- 4 Pipe Bending Machine Operator
- 4 Pipe Wrapping Machine Operator
- 4 Boring Machine Operator
- 4 Back Filling Machine Operator

### PUMPS

Group

- 6 Pump Operator (any power)
- 6 Hydrostatic Pump Operator
- 5 Pump Operator, more than 5 (any size)
- 5 Pot Rammer Operator

### RAILROAD EQUIPMENT

Group

- 6 Brakeman
- 6 Oiler
- 6 Switchman
- 6 Motorman
- 6 Ballast Jack Tamper Operator
- 5 Locomotive Operator, under 40 tons

**OREGON DETERMINATION 2005-02**

TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE	FRINGE
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**POWER EQUIPMENT OPERATORS**

(Continued)

**RAILROAD EQUIPMENT (Cont.)**

Group

- 5 Ballast Regulator Operator
- 5 Ballast Tamper Multi-Purpose Operator
- 5 Track Liner Operator
- 5 Tie Spacer Operator
- 5 Shuttle Car Operator
- 5 Locomotive Operator, 40 tons and over

**REMOTE CONTROL**

Group

- 4 Vacuum Blasting Machine Operator/Mechanic
- 4 Ultra High Pressure Water Jet Cutting Tool System Operator/Mechanic
- 4 Concrete Cleaning Decontamination Machine Operator
- 2 Remote controlled earth-moving equipment
- 2 Master Environmental Maintenance Mechanic
- 2 Heavy Equipment Robotics Operator
- 2 Heavy Equipment Robotics Mechanic

**REPAIRMEN, Heavy Duty**

Group

- 6 Parts Man (Tool Room)
- 6 H.D. Repairman Assistant
- 6 Welder's Helper Assistant
- 4 Diesel Electric Engineer (Plant or Floating)
- 4 Bolt Threading Machine Operator
- 4 Drill Doctor (Bit Grinder)
- 4 H.D. Mechanic
- 4 H.D. Welder
- 4 Machine Tool Operator
- 4 Combination H.D. Mechanic-Welder, when dispatched and/or when required to do both
- 4 Welder; Certified when dispatched and/or required

**RUBBER-TIRED SCRAPERS**

Group

- 4 Rubber-tired Scraper Operator, single engine, single scraper

**POWER EQUIPMENT OPERATORS**

(Continued)

**RUBBER-TIRED SCRAPERS (Cont.)**

Group

- 4 Self-loading, paddle wheel, auger type under 15 cu. yds.
- 4 Rubber-tired Scraper Operator, twin engine
- 4 Rubber-tired Scraper, with push-pull attachments
- 4 Self-loading, paddle wheel, auger type 15 cu. yds. And over, single engine
- 4 Water pulls, water wagons
- 3 Self-loading, paddle wheel, auger type, finish and/or 2 or more units
- 3 Rubber-tired Scraper-Operator, with tandem scrapers
- 2 Rubber-tired Scraper Operator, with tandem scrapers, multi-engine

**MATERIAL HAULERS**

Group

- 5 Cat wagons DJB's, Volvos, similar types
- 5 Conveyored material hauler
- 5 Water Trucks
- 5 All Terrain trucks, Track Trucks

**SHOVEL, DRAGLINE, CLAMSHELL, SKOOPER, ETC., OPERATOR**

Group

- 6 Oiler
- 6 Grade Oiler
- 6 Grade Checker
- 6 Fireman
- 4 Diesel-Electric Engineer
- 4 Stationary Drag Scraper Operator
- 4 Shovel, Dragline, Clamshell, Operator under 3 cu. yd.
- 4 Grade-all Operator
- 3 Shovel, Dragline, Clamshell, Operator 3 cu. yds., but less than 5 cu. yds.
- 2 Shovel, Dragline, Clamshell, Operator, 5 cu. yds. and over

**SIGNALMAN**

Group

- 6 Helicopter Radioman (ground)
- 6 Bell Boy, phones, etc., Operator

**OREGON DETERMINATION 2005-02**

TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE	FRINGE
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**POWER EQUIPMENT OPERATORS**

(Continued)

**SURFACING (BASE) MATERIAL**

Group

- 6 Tamping Machine Operator, mechanical, self-propelled
- 6 Roller Operator, grading of base rock (not asphalt)
- 6 Hydrographic Seeder Machine Operator, straw, pulp or seed
- 5 Roller Operator, Oiling, C.T.B.
- 5 Rock Spreaders, self-propelled
- 5 Pulva-Mixer or similar types
- 5 Lime Spreading Operator, construction job site
- 5 Chip Spreading Machine Operator
- 4 Blade Mounted Spreaders, Ulrich and similar types

**SWEEPERS**

Group

- 6 Broom Operator, self-propelled, construction job site
- 5 Sweeper Operator (Wayne type) self-propelled, construction job site

**TRACTOR - RUBBER TIRED**

Group

- 5 Tractor Operator, rubber-tired, 50 H.P. Flywheel and under
- 4 Tractor Operator, rubber-tired, over 50 H.P. Flywheel
- 4 Tractor Operator, with boom attachment
- 4 Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type)
- 4 Challenger
- 4 Skip loader, Drag Box

**TRENCHING MACHINE**

Group

- 6 Oiler
- 6 Grade Oiler
- 5 Trenching Machine Operator, maximum digging capacity 3 ft. depth
- 4 Trenching Machine Operator, maximum digging capacity over 3 ft. depth
- 4 Back Filling Machine Operator

**POWER EQUIPMENT OPERATORS**

(Continued)

**TRENCHING MACHINE (Cont.)**

Group

- 2 Wheel Excavator, under 750 cu. yds. per hour
- 2 Canal Trimmer
- 2 Wheel Excavator, over 750 cu. yds. per hour
- 2 Band Wagons (in conjunction with wheel excavator)

**TUNNEL**

Group

- 6 Air Filtration Equipment Operator
- 6 Conveyor Operator (any type)
- 5 Dinkey
- 4 Mucking Machine Operator
- 4 Shield Operator

**UNDERWATER EQUIPMENT**

Group

- 2 Underwater Equipment Operator, remote or otherwise, when used in construction work

**WELDING MACHINES**

Group

- 6 Welding Machine Operator

**ROOFERS**

Area 1

Roofers	24.50	7.48
Handling coal tar pitch	26.95	7.48
Remove fiberglass insulation	26.95	7.48

Clackamas	Gilliam	Multnomah	Washington
Clatsop	Grant	Tillamook	Wheeler
Columbia			

Area 2\* (a) & (b)

Roofers		19.35	8.40
Benton	Douglas	Linn	Yamhill
Coos	Lane	Marion	
Curry	Lincoln	Polk	

OREGON DETERMINATION 2005-02				
TRADE	BASIC HOURLY RATE	FRINGE	TRADE	BASIC HOURLY RATE

### ROOFERS (Continued)

\* Add \$2.00 to basic hourly rate for application, spudding and cutting or removal of coal tar products.

\* Add \$0.50 per hour to base hourly rate for application, spudding and cutting or removal of fiberglass insulation.

#### Area 4\*\*

Roofers	21.59	6.70
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Umatilla	Union
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\*\* Add \$2.00 to basic hourly rate for employees working with irritable bituminous materials

\*\* Add \$2.00 to basic hourly rate for employees working with "Densdeck" roofing board

\*\* Add \$2.00 to basic hourly rate for employees removing fiberglass insulation

#### Area 5\*\*\*

Roofers	21.81	6.75
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Morrow

\*\*\* Add \$3.00 to basic hourly rate for employees working with irritable bituminous materials

### SHEET METAL WORKERS

<u>Area 1</u>	29.93	13.23
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Add \$1.00 to base rate for work performed on any swinging platform, swinging chair or swinging ladder.

Add \$1.00 to base rate for work with lead or installing material in a plant that uses lead in any form to manufacture a product (excluding soldering).

Add \$1.00 to base rate for work performed in a confined space as defined by OSHA.

<u>Area 2</u>	21.71	10.70
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### SHEET METAL WORKERS (Continued)

Add \$1.75 to base rate for work performed whenever it is possible for worker to fall 30 ft or more.

Add \$1.75 to base rate for work performed in an area where epoxy resins or other injurious chemicals are being applied

<u>Area 3</u>	25.89	13.75
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Add \$1.00 to base rate for work where it is necessary to wear a chemically activated face mask.

<u>Area 4</u>	25.99	12.61
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<u>Area 5</u>	25.67	12.03
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<u>Area 1</u>	<u>Area 2</u>	<u>Area 3</u>	<u>Area 4</u>	<u>Area 5</u>
---------------	---------------	---------------	---------------	---------------

Clackamas	Malheur	Morrow	Douglas	Coos
Gilliam		Umatilla	Lane	Curry
Grant				
Harney				
Hood River				
Multnomah				
Sherman				
Wasco				
Washington				
Wheeler				

<u>SOFT FLOOR LAYERS</u>	22.66	9.61
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Soft tile, Linoleum, carpet

<u>SPRINKLER FITTERS</u>	25.65	12.75
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<u>TENDERS TO MASON TRADES</u>	23.34	9.65
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Tenders to Bricklayers and Stone Masons, Mortar Mixers

Add \$0.50 to base rate for refractory work.

Add to base rate an amount equal to that received for safety belt requirements or other unusual job conditions by the mechanic this worker is tending.

<u>TENDERS TO PLASTERERS</u>	22.09	9.65
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# **OREGON DETERMINATION 2005-02**

TRADE	BASIC HOURLY RATE	FRINGE
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TRADE	BASIC HOURLY RATE	FRINGE
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## **TILE SETTER/TERRAZZO WORKERS**

25.13	9.60
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This trade is tended by "Tile, Terrazzo, Brick & Marble Finishers."

Add \$0.50 to base rate if safety belt required by State safety regulations.

Add \$1.00 to base rate if work involves epoxy, furnane, alkor acetylene black grouting or waterproof membrane.

## **TILE, TERRAZZO FINISHERS**

18.81	7.30
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## **MARBLE AND BRICK FINISHERS**

18.81	7.40
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Assists Tile Setter, Bricklayers, Marble Masons and Terrazzo Workers by striking, sawing, cleaning, washing or grouting. Does not lay or set any material.

Add \$1.00 to base rate if safety belt required by State safety regulations.

Add \$1.00 to base rate if work involves epoxy, furnane, alkor acetylene black grouting or waterproof membrane.

Add \$1.00 to fringe for refractory repair work.

## **TRUCK DRIVERS**

Group 1	23.60	11.05
Group 2	23.72	11.05
Group 3	23.85	11.05
Group 4	24.11	11.05
Group 5	24.33	11.05
Group 6	24.49	11.05
Group 7	24.69	11.05

(Zone Pay in addition to Basic Hourly Rate and Fringe.)

For the Following Cities:

Albany	Grants Pass	Ontario
Astoria	Hermiston	Oregon City
Baker	Hood River	Pendleton
Bend	Klamath Falls	Portland
Bingen	LaGrande	Port Orford
Brookings	Lakeview	Reedsport

## **TRUCK DRIVERS (Continued)**

For the Following Cities (Cont):

Burns	Longview	Roseburg
Coos Bay	Madras	Salem
Corvallis	Medford	The Dalles
Eugene	McMinnville	Tillamook
Goldendale	Newport	Vancouver

## **Zone differential for Truck Drivers**

(Add to Zone A rate)

Zone B	.65
Zone C	1.15
Zone D	1.70
Zone E	2.75

Zone A: Projects within 30 miles of the cities listed above

Zone B: More than 30 miles but less than 40 miles.

Zone C: More than 40 miles but less than 50 miles.

Zone D: More than 50 miles but less than 80 miles.

Zone E: More than 80 miles.

## **Group 1**

Articulated Dump Truck Driver  
A-Frame or Hydra-Lift Truck w/load bearing surface  
Battery Rebuilder  
Bus or Man-Haul Driver  
Concrete Buggies (power operated)  
Driver  
Dump Trucks, side, end and bottom dumps up to and including 10 cu. yards, including semi-trucks and trains or combinations thereof  
Fork Lifts used in loading, unloading and transporting material on job site  
Fuel Truck Driver  
Lift Jitney Driver  
Loader and/or Leverman on concrete dry batch plant manually operated  
Lubrication Man  
Pickup Truck Driver  
Pilot Car Driver  
Slurry Truck Driver or Leverman  
Solo Flat Bed and miscellaneous body trucks (0-10 tons)  
Steam Cleaner or combination  
Tireman  
Transit Mix & Wet or Dry Mix Truck Driver, 5 cu. yds & under  
Truck and Truck Mechanic Assistant

OREGON DETERMINATION 2005-02			
TRADE	BASIC HOURLY RATE	FRINGE	TRADE
			BASIC HOURLY RATE

#### TRUCK DRIVERS (Continued)

Wash Rack Operator  
Water Wagon up to 3,000 gallons

#### Group 2

Dump Truck/Articulated Dump Driver, 6-10 cu yds.  
Dumpsters or similar equipment – all sizes  
Flaherty Spreader Driver or Leverman  
Low Bed Equipment, Flat Bed Semi-Truck &  
Trailer or doubles driver transporting  
equipment or wet or dry materials  
Lumber Carrier, Driver-Straddle Carrier used in  
loading, unloading and transportation of  
material on job site  
Oil Distributor Driver or Leverman  
Transit Mix and Wet or Dry Mix Truck Driver over  
5 cu. yds. and including 7 cu. yds.  
Vacuum Truck Driver  
Water Wagon Driver, 3,000 to 5,000 gallons

#### Group 3

Dump Trucks, side end and bottom dump driver  
over 10 cu. yds. and including 30 cu. yds,  
including semi-trucks and trains or  
combinations thereof.  
Transit Mix and Wet or Dry Mix Trucks over 7 cu.  
yds. and including 11 cu. yds.  
Truck Mechanic –Welder –Body Repairman  
Water Wagons, 5,000 to 10,000 gallons

#### Group 4

Dump Trucks, side, end and bottom dump driver  
over 30 cu. yds and including 50 cu. yds.  
including semi-trucks and trains or  
combinations thereof  
Transit Mix and Wet or Dry Mix Truck Driver,  
over 11 cu. yds and including 15 cu. Yds  
Water Wagons, 10,000 to 15,000 gallons

#### Group 5

Dump Trucks, side, end and bottom dumps over 50  
cu. yds and including 60 cu. yds, including  
semi-trucks and trains or combinations thereof.

#### TRUCK DRIVERS (Continued)

#### Group 6

Dump Trucks, side, end and bottom dumps over 60 cu.  
yds. and including 80 cu. yds including semi-  
trucks and trains or combinations thereof.

#### Group 7

Dump Trucks, side, end, and bottom dumps over 80 cu.  
yds and including 100 cu. yds., including semi-  
trucks and trains or combinations thereof.



## BUREAU OF LABOR AND INDUSTRIES PREVAILING WAGE RATE UNIT

### INSTRUCTIONS FOR COMPLETING THE PREVAILING WAGE RATE PAYROLL/CERTIFIED STATEMENT FORM

This form may be used by contractors for reporting their payroll as required by ORS 279C.845 on public works projects subject to the Prevailing Wage Rate Law. The form contains a certified statement that is required to be signed by the contractor, certifying the accuracy of the information reported on the payroll, including representations pertaining to the provision of fringe benefits to employees by third parties. Contractors are not required to use this form in reporting their payroll, however, the contractor must provide all of the information contained in the form, and the certified statement must be signed and submitted with the contractor's payroll. Detailed instructions concerning the preparation of the form follow:

Complete the box at the top of the form. Check either the prime contractor or subcontractor box. Be sure to enter the date the contract was first advertised for bid. If you are not sure of this date, contact the Public Contracting Agency.

**Column 1 – NAME AND ADDRESS OF EMPLOYEE:** The employee's full name must be shown on each payroll submitted. The employee's address must also be shown on the first payroll submitted. (The address need not be shown on subsequent payrolls submitted unless the address changes.)

**Column 2 – TRADE CLASSIFICATIONS:** List the classification found in the Bureau of Labor and Industries' publication "Prevailing Wage Rates for Public Works Contracts in Oregon," that is most descriptive of the work actually performed by the employee. Give the group number for those worker classifications that include such information. Consult the worker classifications and minimum prevailing wage rate schedule set forth in the contract specifications. Use the appropriate prevailing wage rates in effect at the time the contract was first advertised for bid for information regarding trade classifications, base hourly rates, and hourly fringe benefits. Indicate which workers are apprentices, if any, and give their current percentage, trade classification, and group number when applicable. If an employee works in more than one worker classification, use the highest rate for all hours worked, or use separate line entries to show hours worked, rate of pay, and fringe benefit for each classification.

**Column 3 – DAY AND DATE:** Enter the day of the week (M, T, W, Th, F, S, and Sn) in the top row of boxes, and the corresponding date below.

**HOURS WORKED EACH DAY:** Enter the total number of "straight time" hours worked in the row marked "S." Hours worked over 8 in a day or work performed on Saturdays, Sundays, and legal holidays should be entered as overtime ("OT") hours worked. Contractors who have adopted a written work schedule of four consecutive ten-hour days, Monday through Thursday or Tuesday through Friday may enter hours worked over 10 in a day as overtime hours.

**Column 4 – TOTAL HOURS:** Enter separately the total number of straight time and overtime hours worked by each listed employee and classification during this pay period. The total number of straight time hours worked should be entered in the lower box ("S"); the total number of overtime hours worked should be entered in the top box ("OT").

**Column 5 – BASE HOURLY RATE OF PAY:** Enter the base hourly rate and the overtime hourly rate (if any) paid the employee in the appropriate straight time and overtime boxes. (Payment of not less than one and one half times the base or regular rate of pay, not including fringe benefits, is required to be paid in overtime pursuant to ORS 279C.540.)

**Column 6 - HOURLY FRINGE BENEFIT AMOUNT PAID AS WAGES TO THE EMPLOYEE:** Enter any additional wages paid directly to the employee in lieu of fringe benefits. (It is not necessary to pay time and a half for overtime work on those wages that are paid in lieu of fringe benefits.)

**Column 7 – GROSS AMOUNT EARNED:** Enter the gross amount of wages earned by and paid to the worker in each classification for all listed straight time and overtime hours, and including any additional amounts paid directly to the employee.

**Column 8 – TOTAL DEDUCTIONS, FICA, FED, STATE, ETC.:** Enter the total amount of deductions withheld from the wages of each employee for only those hours reported on this payroll/certified statement for this project. (All deductions must be in accordance with the provisions of ORS 652.610.)

**Column 9 – NET WAGES PAID FOR WEEK:** Enter the total amount of net wages actually paid to the employee after subtracting the total deductions reported in Column 8 from the gross amount earned shown in Column 7.

**Column 10 – HOURLY FRINGE BENEFITS PAID TO BENEFIT PARTY PLAN, FUND OR PROGRAM:** Enter the hourly amount of fringe benefits paid to each individually approved party, plan, fund or program for each employee. List these amounts separately on the lines provided. Any contractor who is making payments to approved parties, plans, funds or programs in amounts less than the required hourly fringe benefit is obligated to pay the difference directly to the employee as wages in lieu of fringe benefits, and to show that amount in Column 6 of this form.

**Column 11 – NAME OF BENEFIT PARTY, PLAN, FUND OR PROGRAM:** Enter the name of the party, plan, fund or program that corresponds to the amount paid as an hourly fringe benefit in Column 10.

#### **CALCULATION CHECK**

In order to determine whether the wages and fringe benefits paid are sufficient to meet prevailing wage rate requirements, the following check may be performed:

1. For each trade classification listed in Column 2, compute the sum of:
  - a) the Base Hourly Rate of Pay (Column 5),
  - b) the Hourly Fringe Benefit Amount Paid as Wages to Employee (Column 6),
  - c) and the Hourly Fringe Benefits Paid To Benefit Party, Plan, Fund or Program (Column 10).
2. This sum must equal or exceed the total of the Base Hourly Rate (including zone pay and special wage differentials, if any) and the Fringe Benefit Amount as they are listed for the corresponding trade classifications in the appropriate issue of the Bureau of Labor and Industries publication Prevailing Wage Rates for Public Works Contracts in Oregon.

IF YOU HAVE QUESTIONS REGARDING COMPLETION OF THIS FORM, CONTACT THE PREVAILING WAGE RATE UNIT OF THE BUREAU OF LABOR AND INDUSTRIES AT (503) 731-4723.

**NOTE: PAYROLL/CERTIFIED STATEMENTS ARE REQUIRED TO BE SUBMITTED TO THE CONTRACTING AGENCY ONLY.**

BUREAU OF LABOR AND INDUSTRIES  
WAGE AND HOUR DIVISION

PAYROLL/CERTIFIED STATEMENT FORM WH-38  
FOR USE IN COMPLYING WITH ORS 279C.845

PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐

Business Name (DBA):		Phone: (    )	CCB Registration Number:
Project Name:		Project Number:	Type of Work:

Street Address:	Project Location:
Mailing Address:	Project County

Date Pay Period Began:	Date Pay Period Ended:
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<p><b>THIS SECTION FOR PRIME CONTRACTORS ONLY</b></p> <p>Public Contracting Agency Name: Phone: (    ) Date Contract Specifications First Advertised for Bid: Contract Amount:</p>	<p><b>THIS SECTION FOR SUBCONTRACTORS ONLY</b></p> <p>Subcontract Amount: Prime Contractor Business Name (DBA): Prime Contractor Phone: (    ) Prime Contractor's CCB Registration Number: Date You Began Work on the Project:</p>
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(1)	(2)		(3) DAY AND DATE							(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
NAME AND ADDRESS OF EMPLOYEE	TRADE, CLASSIFICATION (INCLUDE GROUP # IF APPLICABLE)									TOTAL HOURS	BASE HOURLY RATE OF PAY	HOURLY FRINGE BENEFIT AMOUNTS PAID AS WAGES TO EMPLOYEE	GROSS AMOUNT EARNED	TOTAL DEDUCTIONS FICA, FED, STATE, ETC.	NET WAGES PAID FOR WEEK	HOURLY FRINGE BENEFITS PAID TO BENEFIT PARTY, PLAN, FUND, OR PROGRAM	NAME OF BENEFIT PARTY, PLAN, FUND, OR PROGRAM	
			HOURS WORKED EACH DAY															
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(1)	(2)		(3) DAY AND DATE							(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
NAME AND ADDRESS OF EMPLOYEE	TRADE, CLASSIFICATION (INCLUDE GROUP # IF APPLICABLE)									TOTAL HOURS	BASE HOURLY RATE OF PAY	HOURLY FRINGE BENEFIT AMOUNTS PAID AS WAGES TO EMPLOYEE	GROSS AMOUNT EARNED	TOTAL DEDUCTIONS FICA, FED, STATE, ETC.	NET WAGES PAID FOR WEEK	HOURLY FRINGE BENEFITS PAID TO BENEFIT PARTY, PLAN, FUND, OR PROGRAM	NAME OF BENEFIT PARTY, PLAN, FUND, OR PROGRAM
			HOURS WORKED EACH DAY														
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**CERTIFIED STATEMENT**

I, \_\_\_\_\_ DO HEREBY STATE:  
 (NAME OF SIGNATORY PARTY) (TITLE)

(1) THAT I PAY OR SUPERVISE THE PAYMENT OF THE PERSONS EMPLOYED BY: \_\_\_\_\_ ON THE \_\_\_\_\_  
 (CONTRACTOR, SUBCONTRACTOR OR SURETY) (BUILDING OR WORK)

THAT DURING THE PAYROLL PERIOD COMMENCING ON THE \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ AND ENDING THE \_\_\_\_ DAY OF \_\_\_\_\_  
 (MONTH) (YEAR) (MONTH) (YEAR)

ALL PERSONS EMPLOYED ON SAID PROJECT HAVE BEEN PAID THE FULL WEEKLY WAGES EARNED, THAT NO REBATES HAVE BEEN OR WILL BE MADE EITHER DIRECTLY OR INDIRECTLY TO OR ON BEHALF OF SAID \_\_\_\_\_ FROM THE FULL WEEKLY WAGES EARNED BY ANY PERSON, AND THAT

(CONTRACTOR, SUBCONTRACTOR OR SURETY)  
 NO DEDUCTIONS HAVE BEEN MADE EITHER DIRECTLY OR INDIRECTLY FROM THE FULL WAGES EARNED BY ANY PERSON, OTHER THAN PERMISSIBLE DEDUCTIONS AS SPECIFIED IN ORS 652.610, AND DESCRIBED AS FOLLOWS:

(2) THAT ANY PAYROLLS OTHERWISE UNDER THIS CONTRACT REQUIRED TO BE SUBMITTED FOR THE ABOVE PERIOD ARE CORRECT AND COMPLETE; THAT THE WAGE RATES FOR WORKERS CONTAINED THEREIN ARE NOT LESS THAN THE APPLICABLE WAGE RATES CONTAINED IN ANY WAGE DETERMINATION INCORPORATED IN THE CONTRACT; THAT THE CLASSIFICATION SET FORTH THEREIN FOR EACH WORKER CONFORMS WITH WORK PERFORMED.

(3) THAT ANY APPRENTICES EMPLOYED IN THE ABOVE PERIOD ARE DULY REGISTERED IN A BONA FIDE APPRENTICESHIP PROGRAM REGISTERED WITH A STATE APPRENTICESHIP AGENCY RECOGNIZED BY THE BUREAU OF APPRENTICESHIP AND TRAINING, UNITED STATES DEPARTMENT OF LABOR, OR IF NO SUCH RECOGNIZED AGENCY EXISTS IN A STATE, ARE REGISTERED WITH THE BUREAU OF APPRENTICESHIP AND TRAINING, UNITED STATES DEPARTMENT OF LABOR.

I HAVE READ THIS CERTIFIED STATEMENT, KNOW THE CONTENTS THEREOF AND IT IS TRUE TO MY KNOWLEDGE.

\_\_\_\_\_  
 NAME AND TITLE SIGNATURE

**NOTE TO CONTRACTORS:** YOU MUST ATTACH COPIES OF THIS FORM TO EACH OF YOUR PAYROLL SUBMISSIONS ON THIS PROJECT. SEE THE BOLI PUBLICATION PREVAILING WAGE RATES FOR PUBLIC WORKS CONTRACTS IN OREGON FOR INSTRUCTIONS ON COMPLETING THIS FORM.

FILE THIS FORM WITH THE CONTRACTING AGENCY





**AMENDMENT NO. 8 TO GROUND LEASE  
BULK CARGO FACILITY/TERMINAL 5  
BETWEEN  
THE PORT OF PORTLAND  
AND  
PORTLAND BULK TERMINALS, L.L.C.**

This AMENDMENT NO. 8 TO GROUND LEASE ("Amendment No. 8") is made and entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and PORTLAND BULK TERMINALS, L.L.C., ("Lessee"), an Oregon limited liability company, organized as an indirect U.S. subsidiary of Canpotex Limited, a Canadian corporation ("Canpotex").

**RECITALS**

A. The Port and Lessee entered into a Ground Lease, dated March 14, 1996, (Port Agreement No. 96-039) which was subsequently amended by Amendment No. 1 to Ground Lease, dated August 29, 1997; Amendment No. 2 to Ground Lease, dated October 23, 1997; Amendment No. 3 to Ground Lease, dated September 9, 1999; Amendment No. 4 to Ground Lease, dated May 19, 2003; Amendment No. 5 to Ground Lease, dated July 1, 2004; Amendment No. 6 to Ground Lease, dated March 16, 2005; and Amendment No. 7 to Ground Lease, dated February 15, 2006 (collectively, the "Lease").

B. During the time the Port and Lessee were negotiating terms to extend the Lease and expand the Bulk Cargo Facility, they entered into an Amendment No. 7 to Ground Lease in order to allow Lessee to begin due diligence and construction preparation work on an additional twenty four (24) acres of Port property in anticipation of the Bulk Cargo Facility expansion and in anticipation of entering into this Amendment No. 8.

C. The Port and Lessee have now completed negotiations for expansion of the Bulk Cargo Facility on the Property, and wish to amend the Lease to extend the lease term, increase the acreage for the duration of the Lease Term, provide for the construction of rail and storage building expansion, and modify the minimum annual guarantee, as more particularly described below.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. AGREEMENT TO LEASE AND DESCRIPTION OF ADDITIONAL LAND**

In addition to the Property already leased by the Port to Lessee under the Lease, including the additional 24.01 acres of Land leased pursuant to Amendment No. 7, the Port hereby leases to Lessee and Lessee leases from the Port 11.052 acres of "Additional Land", for an agreed upon total of approximately 100.062 acres of leased Land, all as more particularly described and shown on the attached **Exhibit A-2**. Except as expressly provided in this Amendment No. 8, all references in the Lease to the Land and the Property shall be deemed to include this Additional Land, and it shall be subject to all the terms and conditions under the Lease. The Port and Lessee agree to replace **Exhibit A1** to the Lease with the attached **Exhibit A-2**. The Port Expansion Area previously leased by Lessee

from the Port on a month-to-month basis pursuant to Amendment No. 7 to the Lease is hereby incorporated, together with the Additional Land, as part of the Property under the Lease for the remaining Lease Term, as provided in this Amendment No. 8.

## **2. CONDITION OF ADDITIONAL LAND**

Except as expressly provided herein, the Port makes no warranties or representations regarding the condition, including the environmental condition, of any of the Land, including the Additional Land, nor does the Port warrant the Land's suitability for Lessee's intended use. Lessee has had access to Port records relating to, and has inspected and accepts the Additional Land in "AS IS" condition upon taking possession, subject to the allocation of environmental liability as provided in Section 6.3 of the Lease.

## **3. BASELINE ENVIRONMENTAL AUDIT**

A Periodic Audit of the Property, including the Port Expansion Area and the Additional Land entitled Phase I Environmental Site Assessment of Terminal 5 Expansion Area, and dated March 28, 2006 ("2006 Periodic Audit"), has been conducted by Hart Crowser under the provisions of Section 6.3 of the Lease. The 2006 Periodic Audit is hereby incorporated in the Lease for all purposes, and shall serve as both the Initial Audit and the environmental baseline for determination of all potential future environmental liability with respect to both the Port Expansion Area and the Additional Land, as further provided in Section 6 of the Lease.

## **4. LEASE TERM**

The Lease Term will be extended for approximately nine and one-half (9.5) years, with the new Expiration Date to be March 1, 2036. All references to the Expiration Date in the Lease shall hereafter mean March 1, 2036.

### **4.1 No Lease Renewal Option**

There is no Lease Renewal Option remaining under the Lease and all references thereto are hereby deleted.

## **5. BASIC RENT AMOUNT**

Immediately upon both Substantial Completion of the Third Track (defined in Section 8.1 of this Amendment No. 8) and the Expansion Work (defined in Section 8.2 of this Amendment No. 8), Section 3.2 of the Lease shall be deleted in its entirety and replaced by the following:

"Basic Rent due hereunder shall be as follows:

Basic Rent charges to Lessee shall be based on the volume of Approved Products processed through the Property or the Licensed Area. In no case, however, regardless of volume, shall Basic Rent ever be less than the Basic Rent based on a volume of 2 million metric tons per year, calculated at the rates provided below ("Minimum Basic Rent").

Basic Rent shall be charged as follows:

During the Lease Year 2005/2006, Basic Rent shall be calculated as follows:

for the first 1,535,000 MT or less, Basic Rent shall be calculated at the rate of \$0.53/MT;

for all amounts over 1,535,000 MT, Basic Rent shall be calculated at the rate of \$.43/MT.

Basic Rent rates and the Minimum Basic Rent shall be adjusted annually in accordance with Section 3.4 of the Lease.

As used in the Lease, "Substantial Completion" with respect to the Third Track shall mean that date by which the Port's engineer reasonably certifies in writing to Lessee that the Third Track is sufficiently complete so that Lessee can utilize the Third Track for receipt and delivery of unit trains, and has been substantially completed in accordance with the Plans as further provided in Section 8.1 of this Amendment No. 8. As used in this Amendment No. 8, "Substantial Completion" with respect to the Expansion Work shall have the meaning provided in the 2006 Construction Contract (defined in Section 8.2 of this Amendment No. 8).

## **6. ALLOWED USES OF PORT EXPANSION AREA**

Section 3 of Amendment No. 7 to the Lease is hereby deleted. The entire Property shall be subject to the provisions of Section 1.3.1 of the Lease (Permitted Use) and the Port Expansion Area shall hereinafter have no special designation or restrictions and shall simply be considered part of the Property.

## **7. MODIFICATIONS TO ENVIRONMENTAL AND NATURAL RESOURCES PROTECTION PROVISIONS**

### **7.1 Hazardous Substances**

The definition of "Hazardous Substances" in Section 6.2.2 of the Lease is hereby deleted and the following definition is substituted therefor:

"Hazardous Substances" shall be interpreted in the broadest sense to include any substance, material, product, pollution or pollutant defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Laws.

### **7.2 Environmental Audit**

All references to "environmental audit" in the Lease shall mean an environmental site assessment or compliance audit conducted of the Property that is consistent with, as appropriate, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq ("CERCLA") Section 101(35)(B), 42 U.S.C. § 9601(35)(B)), 40 CFR Part 312, ORS 465.255(6), and American Society of Testing Materials ("ASTM") Standard E1527-05 (Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process) criteria for all appropriate inquiries into the previous ownership and uses of the site and compliance assessment or auditing standards appropriate to the types of permitted uses engaged in by Lessee and its employees, agents, contractors or invitees on the Premises, including ASTM Standards E2107-00, or any successors to such criteria and standards.

### **7.3 AST Definition**

The definition of "AST," as used in the Lease is hereby amended to mean above-ground fuel tanks as referenced in Section 1.3.1 of the Lease, and aboveground storage tanks, portable or mobile

storage tanks, aboveground piping, dispensers, related underground and aboveground structures and equipment, including, but without limitation, associated spill containment features and oil/water separators, and the surrounding area used in connection with the operation for fueling and other management of Hazardous Substances.

#### **7.4 Natural Resources Damage**

The following new Section 6.2.4 is hereby added to the Lease:

##### **6.2.4 Natural Resources Damage**

"Natural Resources Damage" is the injury to, destruction of, or loss of natural resources. The measure of damage is the cost of restoring injured natural resources to their baseline condition, compensation for the interim loss of injured natural resources pending recovery, and the reasonable cost of a damage assessment. Natural resources include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed, by, held in trust by, appertaining to, or otherwise controlled by the United States, any State, an Indian Tribe, or a local government.

#### **7.5 Natural Resources Damages Assessment and Restoration**

The following new Section 6.13 is hereby added to the Lease:

##### **6.13 Natural Resources Damages Assessment and Restoration**

Lessee shall promptly undertake, at Lessee's sole expense, all actions necessary to ensure that any Natural Resources Damage associated with Lessee's use of the Property is investigated, determined, quantified, assessed, permanently restored and/or compensated for to the extent required by law.

#### **7.6 Storm Water Management**

The following new Section 6.14 is hereby added to the Lease:

##### **6.14 Storm Water Management**

Lessee shall manage stormwater associated with the Property prior to its discharge into any storm sewer system in compliance with applicable Environmental Laws, including in compliance with the Port's municipal separate storm sewer system "MS4" permit (permit number 101314), any individual storm water discharge permit issued to Lessee, and any requirements of the Oregon Department of Environmental Quality ("DEQ") or the City of Portland. Upon request, Lessee shall provide information to the Port demonstrating Lessee's compliance with Lessee's individual storm water management permits. Lessee may satisfy this obligation by providing the Port the opportunity to review and copy Lessee's current permit, storm water management plan, and any of the Lessee's permit-required annual report(s). The Port and Lessee will periodically coordinate with one another regarding the actions they must take in order to implement their respective permits.

#### **7.7 AST Use**

The following new Section 6.15 is hereby added to the Lease:

##### **6.15 AST Use**

Lessee shall not install any AST on the Property without first obtaining the Port's prior written approval, which may be granted or denied in the Port's reasonable discretion, and which shall be conditioned upon Lessee executing an amendment to the Aboveground Petroleum Storage Tank Use Agreement between Lessee and the Port, dated October 23, 1997 to provide for such AST upon terms satisfactory to the Port.

## **8. CONSTRUCTION OBLIGATIONS**

### **8.1 Port Paid Rail Construction**

The Port shall design, construct, and pay for a third loop track ("Third Track"), as shown on the attached **Exhibit B**. This construction is further described in the preliminary plans and specifications prepared by the Port and its consultant, HDR Inc. dated February 23, 2006, and referenced as Port drawing #T5 2006-500 (collectively, together with any subsequent amendments mutually agreed to, in writing, by the parties, the "Plans"), which Plans are incorporated herein by this reference. Lessee has reviewed and approved the Plans.

### **8.2 Bond Financed Improvements and Facilities Lease**

The Port will enter into a Construction Contract with Lessee for the construction of additional Bond Financed Improvements in order to expand the Bulk Cargo Facility ("Expansion Work"), with Lessee assuming a direct oversight and decision-making role in the design and construction of the Project, pursuant to a Construction Contract between the parties of even date herewith, attached hereto as **Exhibit C** ("2006 Construction Contract"). All references in the Lease to "Construction Contract" shall be deemed to include both the original Construction Contract, to the extent that it is still in effect, and the 2006 Construction Contract. Said additional Bond Financed Improvements shall be constructed using funds from the Port's Special Obligation Revenue and Refunding Bonds, Series 2006 (Portland Bulk Terminals, L.L.C. Project) ("2006 Bonds") issued by the Port pursuant to Bond Ordinance No. 419-B enacted on March 8, 2006 ("2006 Ordinance"). The 2006 Bonds and the Bond Financed Improvements are covered by a separate Facilities Lease to be entered into between the parties ("2006 Facilities Lease"). References in the Lease to the Bonds, the Ordinance, and the Facilities Lease, respectively, shall be construed, where applicable, to include all prior Bonds, Ordinances, and Facilities Leases, or supplements and amendments thereto, along with the 2006 Bonds, 2006 Ordinance, and 2006 Facilities Lease.

## **9. COMPLIANCE WITH CAMMP**

### **9.1 Lessee Compliance with CAMMP**

In performing the Expansion Work, Lessee will comply with, and have its contractors and subcontractors comply with the CAMMP, and associated Implementation Plan as more particularly described in Amendment No. 7 to the Lease, with regard to soil and groundwater management within the Former Blue Lagoon Uplands. With respect to the required management activities, as between the parties, the Port shall have responsibility for all Hazardous Substance related testing, monitoring, reporting and disposal costs related to the implementation of the CAMMP, provided that Lessee performs all Expansion Work in conformance with the CAMMP and the Expansion Work is coordinated in advance with the Port. Provided that Lessee performs the Expansion Work in conformance with the CAMMP and the Implementation Plan, and the Expansion Work is coordinated

in advance with the Port, the Port shall continue to be responsible for the costs associated with remedial actions required in connection with the Former Blue Lagoon Uplands, as more particularly set forth in Exhibit G to the Lease entitled "Remediation Requirements and Procedures," and the Port shall also be responsible for reasonable and unavoidable construction delay costs suffered by Lessee resulting from any required remediation by the Port in the Former Blue Lagoon Uplands during construction of the Expansion Work in accordance with the 2006 Construction Contract. Notwithstanding anything to the contrary in this Section 9.1 or in Exhibit G to the Lease, the Lessee, and not the Port, will be responsible for any exacerbation of the condition of the Former Blue Lagoon Uplands caused by Lessee's failure to comply with the CAMMP or the Implementation Plan in performing the Expansion Work or by Lessee's failure to seek Port review and written approval of future development in the Former Blue Lagoon Uplands after completion of the Expansion Work.

## **9.2 Port Compliance with CAMMP**

In constructing the Third Track, the Port will comply with, and have its contractors and subcontractors comply with the CAMMP and associated Implementation Plan with regard to soil and groundwater management within the Former Blue Lagoon Uplands. Notwithstanding anything to the contrary in Section 9.1 of this Amendment No. 8 or in Exhibit G to the Lease, the Port, and not Lessee, will be responsible for any exacerbation of the condition of the former Blue Lagoon Uplands caused by the Port's failure to comply with the CAMMP or the Implementation Plan in constructing the Third Track.

## **10. COMMON AREA AND ROADWAYS**

Section 5.3.1 of the Lease is hereby deleted because all areas referred to as "Common Areas" or "Common Area Roads" have now been leased by Lessee and incorporated into the Property. The Port shall have no remaining responsibility for repair or maintenance of these former Common Areas and Common Area Roads. Lessee shall be responsible for repair and maintenance of all of the Property, including those portions of the Property previously referred to as Common Areas and Common Area Roads.

## **11. LEASE GUARANTEE**

Performance by Lessee of all terms, conditions and obligations under this Lease and under the 2006 Construction Contract is fully and unconditionally guaranteed by Canpotex ("Guarantor") pursuant to an amended Guarantee Agreement, attached hereto as **Exhibit D** ("Amended Guarantee"). All references in the Lease to the Guarantee shall include the Amended Guarantee, as it may be amended from time to time.

## **12. LEASE AND PUBLIC CONTRACT LAWS**

Section 13.23 of the Lease is hereby deleted and the following provision is substituted therefor:

To the extent required by law, the contract provisions required by ORS Chapter 279C to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein and shall control in the event of conflict with any provision of this Lease.

**13. WARRANTY OF AUTHORITY**

The individuals executing this Amendment No. 8 on behalf of Lessee represent and warrant that they are authorized by Lessee to do so.

**14. DEFINED TERMS**

All capitalized terms used but not otherwise defined in this Amendment No. 8 shall have the same meaning as in the Lease.

**15. EFFECT OF AMENDMENT**

Except as otherwise specified in this Amendment No. 8, all of the terms and conditions of the Lease, as previously amended, shall remain in full force and effect. Nothing contained herein is intended to replace or supersede any prior document referenced in the Lease unless it is expressly stated that it is intended to replace or supersede such document.

**16. EXECUTION OF MULTIPLE COUNTERPARTS**

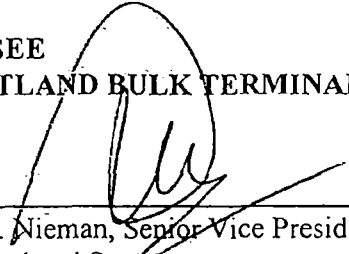
This Amendment No. 8 may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

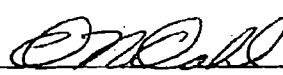
**17. AMENDMENTS**

No further amendment to the Lease shall be effective unless in writing and signed by the parties hereto. Both parties agree to be bound by the terms and conditions of this Amendment No. 8.

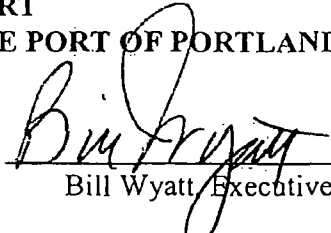
This Amendment No. 8 is dated and is effective this 12th day of April, 2006.

**LESSEE**  
**PORTLAND BULK TERMINALS, L.L.C.**

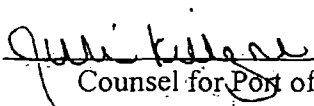
By:   
Ted J. Nieman, Senior Vice President, General  
Counsel and Secretary

By:   
Dwayne N. Dahl, Vice President, Finance and  
Chief Financial Officer

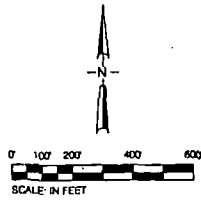
**PORT**  
**THE PORT OF PORTLAND**

By:   
Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By:   
Counsel for Port of Portland

Date Approved By Commission: April 12, 2006



CORPS OF ENGINEERS  
HARBOR LINE  
EST. FEB 9, 1968

POINT OF COMMENCEMENT  
1/4" BRASS DISK  
WITNESS CORNER 1/4" CORNER  
SECTION 23 & 26  
N = 7920.700  
E = 8937.411

ORDINARY HIGH WATER  
LINE ELEV. 17.07  
ESTABLISHED FROM  
RECORDED SURVEY NO. 54844

AREA = 99.088 ACRES  
4,316,327 SF

T.P.O.B.

POWER SUBSTATION

10" WIDE POLY  
TOWNSHIP LINE EASEMENT  
DATED MAR. 3, 1994  
CNO. NO. 23066

HOE WOOD POWER  
POLE (TYP)

**LEASE AREA LEGAL DESCRIPTION:**

A PARCEL OF LAND LYING IN SECTIONS 23 & 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT A WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 & 26, SAID CORNER BEING NORTH 89°53'46" WEST A DISTANCE OF 1895.35 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 26, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN;  
THENCE SOUTH 81° 20' 18" EAST, 158.78 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 32° 03' 34" EAST, 496.17 FEET; THENCE NORTH 25° 17' 20" EAST, 237.72 FEET;  
THENCE NORTH 35° 10' 49" EAST, 105.00 FEET; THENCE NORTH 40° 07' 48" EAST, 50.53 FEET;  
THENCE NORTH 44° 21' 07" EAST, 512.08 FEET TO A POINT OF CURVATURE;  
THENCE 344.98 FEET ALONG THE ARC OF A 700.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THROUGH A CENTRAL ANGLE OF 28° 14' 14" (THE LONG CHORD BEARS NORTH 59° 28' 08" EAST, 341.50 FEET) TO A POINT OF NON-TANGENCY;  
THENCE NORTH 18° 11' 30" WEST, 92.54 FEET; THENCE NORTH 46° 53' 55" WEST, 43.49 FEET;  
THENCE NORTH 43° 20' 02" EAST, 78.42 FEET; THENCE NORTH 56° 30' 42" EAST, 110.34 FEET;  
THENCE NORTH 34° 28' 38" EAST, 22.85 FEET; THENCE NORTH 54° 08' 41" EAST, 158.57 FEET;  
THENCE NORTH 48° 54' 24" EAST, 40.88 FEET; THENCE SOUTH 41° 14' 44" EAST, 104.00 FEET;  
THENCE SOUTH 70° 14' 44" EAST, 231.18 FEET; THENCE SOUTH 43° 32' 30" EAST, 28.36 FEET;  
THENCE SOUTH 10° 22' 38" WEST, 156.99 FEET; THENCE SOUTH 20° 40' 28" WEST, 75.52 FEET;  
THENCE NORTH 80° 27' 22" WEST, 21.05 FEET; THENCE SOUTH 20° 40' 09" WEST, 702.89 FEET;  
THENCE SOUTH 20° 13' 08" WEST, 973.26 FEET; THENCE NORTH 80° 21' 45" WEST, 43.84 FEET;  
THENCE SOUTH 22° 58' 13" WEST, 508.43 FEET; THENCE NORTH 34° 52' 00" WEST, 113.17 FEET;  
THENCE NORTH 36° 28' 40" WEST, 174.84 FEET; THENCE NORTH 62° 20' 55" WEST, 200.42 FEET;  
THENCE NORTH 78° 19' 52" WEST, 713.14 FEET; THENCE NORTH 18° 57' 40" EAST, 8.09 FEET TO A POINT OF NON-TANGENCY; THENCE 548.72 FEET ALONG THE ARC OF A 675.00 FOOT RADIUS CURVE CONCAVE TO THE NORTH-EAST, THROUGH A CENTRAL ANGLE OF 48° 38' 43" (THE LONG CHORD BEARS NORTH 47° 42' 20" WEST, 534.88 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 60° 12' 28" WEST, 13.78 FEET; THENCE NORTH 23° 47' 34" WEST, 20.00 FEET;  
THENCE NORTH 66° 12' 28" EAST, 19.81 FEET TO A POINT OF NON-TANGENCY; THENCE 843.40 FEET ALONG THE ARC OF A 854.00 FOOT RADIUS CURVE CONCAVE TO THE NORTH-EAST, THROUGH A CENTRAL ANGLE OF 55° 28' 08" (THE LONG CHORD BEARS NORTH 04° 19' 31" EAST, 818.57 FEET) TO THE TRUE POINT OF BEGINNING, CONTAINING 4,316,327 SQUARE FEET (99.088 ACRES) MORE OR LESS.

NOTE:  
BASIS OF BEARINGS IS PORT OF PORTLAND LOCAL PROJECTION (INTERNATIONAL FEET), PER PORT OF PORTLAND DRAWING MD RG 2003-3024.

**EXHIBIT A2**

PORT OF PORTLAND PORTLAND, OREGON										DESIGNED BY: T. ANDERSON DRAWN BY: P. SHELDS CHECKED BY: D. ANDERSON DATE: OCT 2008 SCALE: 1" = 500'		TERMINAL 5 CANPOTEX LEASE AREA EXHIBIT PLAT	
SUBMITTED BY: SEBASTIAN DEGENS										DATE: SEP 17, 2005		1/4 (S1-11)	

EXHIBIT B



DISPATCHED BY S. HALL  
 DRAWN BY S. HALL  
 CHECKED BY S. HALL  
 DATE 10/10/19  
 TIME 11:00

PORTLAND BULK TERMINALS TRACK LAYOUT  
PHASE 1

DATE	TIME	LOCATION	REMARKS
10/10/68	10:00	100-44-1000	100-44-1000

**BULK CARGO FACILITY  
CONSTRUCTION CONTRACT**  
**between**  
**THE PORT OF PORTLAND**  
**and**  
**PORTLAND BULK TERMINALS, L.L.C.**

**EXHIBIT C**

## TABLE OF CONTENTS

1.	THE PROJECT.....	2
1.1	General Description of Project.....	2
1.2	Relationship of Parties.....	2
1.3	Port Access.....	2
2.	CONTRACT DOCUMENTS.....	3
2.1	Incorporated Documents.....	3
2.2	No Port Representations.....	3
2.3	Documents to be Reviewed.....	3
2.4	Review of Submitted Documents.....	4
3.	COMMENCEMENT OF WORK.....	4
3.1	Work Schedule.....	4
3.2	Bonds.....	4
3.3	Permits and Plans.....	4
3.4	Port Representative.....	5
4.	CONTRACT AMOUNT.....	5
4.1	Project Cost.....	5
4.2	Excess Expenditures.....	5
4.3	No Profit.....	5
5.	PAYMENTS.....	5
5.1	Monthly Progress Payments.....	5
5.2	Application for Progress Payments.....	6
5.3	Retainage.....	6
5.4	Audit.....	6
5.5	Withholding of Payment.....	6
5.6	Lien/Claims.....	7
6.	SUBSTANTIAL COMPLETION.....	7
6.1	Definitions.....	7
6.2	Notice of Substantial Completion.....	7
7.	FINAL COMPLETION AND FINAL PAYMENT.....	8
7.1	Final Payment.....	8
7.2	Requirements for Release of Retainage.....	8
7.3	No Waiver of Claims by Port.....	9
7.4	Waiver of Claims by Portland Bulk.....	9
8.	PORT RIGHT TO STOP WORK.....	9
9.	OTHER PORTLAND BULK RESPONSIBILITIES.....	9
9.1	Supervision of Work.....	9
9.2	Engineering Firm.....	9

9.3	Wages.....	9
9.4	Payment of Fee Required.....	10
9.5	Workers' Compensation.....	10
9.6	Withholdings.....	10
9.7	Hours of Work .....	10
9.8	Contributions to the Industrial Accident Fund.....	10
9.9	Payment of Claims by the Port .....	10
9.10	Payment of Subcontractors .....	11
9.11	Construction Contractors Board Complaint.....	11
9.12	Liens and Claims Prohibited.....	11
9.13	Drug Testing Program.....	11
9.14	Prompt Payment - First-Tier Subcontracts .....	11
9.15	Prompt Payment - Lower-Tier Subcontracts .....	12
9.16	Medical Payments.....	12
9.17	Discovery of Hazardous Substances.....	12
9.18	Payment of Taxes.....	12
9.19	Warranties .....	12
9.20	Compliance with Laws .....	13
9.21	Responsibility for Acts and Omissions.....	13
9.22	Fees and Licenses .....	13
9.23	Restoration Requirements.....	13
9.24	Safety .....	13
10.	SUBCONTRACTORS .....	14
10.1	Definition of Subcontractor and Supplier .....	14
10.2	Identification of Subcontractors and Suppliers.....	14
10.3	Subcontractor Requirements.....	14
10.4	No Contractual Relationships .....	14
10.5	DBE, MBE, WBE and ESB Subcontractors .....	14
11.	TIME AND PENALTY PROVISION.....	14
11.1	Time of Essence.....	14
11.2	Force Majeure .....	15
11.3	Unavoidable Permitting Delays .....	15
12.	ENVIRONMENTAL INDEMNIFICATION.....	15
13.	INDEMNITY, INSURANCE.....	16
13.1	General Indemnity .....	16
13.2	Insurance Requirements.....	16
13.2.1	General .....	17
13.2.2	Additional Insured/Loss Payee .....	17
13.2.3	Primary Coverage.....	17
13.2.4	Portland Bulk Ground Lease Coverage.....	17
13.2.5	Carrier Rating.....	17
13.3	Required Insurance .....	17
13.3.1	General Liability Insurance.....	17

13.3.2	Automobile Liability Insurance .....	18
13.3.3	Contractors Pollution Liability.....	18
13.3.4	Builder's Risk .....	18
13.3.5	Workers' Compensation Insurance.....	18
14.	CHANGES IN WORK .....	18
15.	WARRANTIES .....	19
15.1	Warranties of Portland Bulk .....	19
15.2	Warranty of Title & Fitness for Particular Purpose .....	19
16.	DEFAULT .....	19
16.1	Material Breach.....	19
16.2	Notice of Material Breach and Cure Period.....	20
16.3	Remedies Following Default .....	20
16.4	Suspension of Payments .....	20
16.5	Claims on Bond/Right to Complete Project.....	20
16.6	Remedies Cumulative and Non-Exclusive .....	21
16.7	Canpotex Guarantee.....	21
17.	ASSIGNMENT .....	21
18.	OTHER CONDITIONS OR PROVISIONS .....	21
18.1	Warranty of Authority.....	21
18.2	Entire Agreement.....	21
18.3	No Benefit to Third Parties .....	21
18.4	Mediation.....	21
18.5	Jurisdiction.....	22
18.6	Attorney Fees .....	22
18.7	Notices .....	22
18.8	Covenants, Conditions, and Restrictions .....	23
18.9	No Implied Warranty by Port .....	23
18.10	Nonwaiver.....	23
18.11	Survival.....	23
18.12	Partial Invalidity.....	24
18.13	Contract Subject to Bonds and Ordinances .....	24
18.14	Calculation of Time .....	24
18.15	Headings .....	24
18.16	Exhibits Incorporated by Reference.....	24
18.17	Execution of Multiple Counterparts.....	24
18.18	No Limit on Port's Powers .....	24
18.19	Modification.....	24

**BULK TERMINAL EXPANSION  
CONSTRUCTION CONTRACT**

This Bulk Terminal Expansion Construction Contract (the "Contract") is made this 12th day of April, 2006 (the "Effective Date"), between THE PORT OF PORTLAND, a duly organized port district of the State of Oregon and "Portland PORTLAND BULK TERMINALS, L.L.C., an Oregon limited liability company ("Portland Bulk").

**RECITALS**

A. The Port and Portland Bulk wish to enter into a contract to expand the existing outbound bulk cargo terminal ("Bulk Cargo Facility") located at the Port's Terminal 5 (the "Project") on approximately 100.062 acres of Port property (the "Project Site"). Portland Bulk is an Oregon Limited Liability Company with Canpotex Terminals (U.S.) Limited ("Canpotex U.S.") as the sole member thereof. Canpotex U.S. is an indirect U.S. subsidiary of Canpotex Limited ("Canpotex"), a Canadian corporation which exports potash from Canada to destinations outside of Canada and the United States in order to facilitate the export of potash and for other related purposes.

B. The existing Bulk Cargo Facility was financed with proceeds from (i) the Port's Special Obligation Revenue Bonds, Series 1996 ("Portland Bulk Terminals, L.L.C. Project") pursuant to Bond Ordinance 379-B, as amended and supplemented by Ordinance No. 384-B; and (ii) the Port's Special Obligation Revenue Bonds, Series 1999 ("Portland Bulk Terminals, L.L.C. Project") pursuant to Bond Ordinance 399-B (collectively, the "Prior Revenue Bonds"). The Project will be designed and constructed using proceeds from the Port's Special Obligation Revenue and Refunding Bonds, Series 2006 (the "2006 Revenue Bonds"), issued by the Port pursuant to Bond Ordinance No. 419-B (the "Ordinance"). The Port has agreed to build this Project, using conduit Special Obligation Revenue Bond financing, at the request of Portland Bulk and for the use of Portland Bulk.

C. Portland Bulk currently leases the Bulk Cargo Facility from the Port pursuant to (i) a long-term ground lease dated March 14, 1996 (as subsequently amended, the "Ground Lease"); and (ii) a Facilities Lease dated March 14, 1996 and the Supplemental Facilities Lease, dated December 16, 1999 (collectively the "Prior Facilities Lease"). Portland Bulk has also entered into an agreement with Canpotex Terminals Limited, a Canadian corporation, pursuant to which Canpotex Terminals Limited guarantees a certain minimum amount of bulk cargo to be processed through the Bulk Cargo Facility. In connection with the Project, the Port and Portland Bulk will (i) amend the Ground Lease pursuant to Amendment No. 8 to Ground Lease of even date herewith, to include an additional 35.062 acres within the Port's Terminal 5, as shown on attached **Exhibit A**, as part of the leased Premises under the Ground Lease for the entire remaining Term of the Lease; (ii) execute a new Facilities Lease, which will replace the

Prior Facilities Lease and incorporate all obligations under the Project ("2006 Facilities Lease"); and (iii) execute an amended Guarantee ("Amended Guarantee") of even date herewith, to amend the Guarantee executed by Canpotex, dated March 14, 1996 and the Guarantee executed by Canpotex, dated December 16, 1999, to provide for Canpotex to guarantee performance and payment by Portland Bulk of all of its obligations, liabilities and indebtedness under all terms and conditions of this Contract.

D. Portland Bulk wishes to assume a direct oversight and decision-making role in the design and construction of the Project since the Project is being built especially for Portland Bulk's use. Portland Bulk will have design, review, and approval responsibility over all plans for the Project.

NOW, THEREFORE, the rights and obligations of the Port and Portland Bulk with respect to the construction of the Project shall be as follows:

## **1. THE PROJECT**

### **1.1 General Description of Project**

This Contract is intended to encompass all work necessary for the design and construction of the Project, including all labor, materials and equipment to be incorporated therein, as well as all permitting, design, construction, testing and commissioning necessary to expand the Bulk Cargo Facility and make it fully operational for the commercial handling of potash, with increased storage capacity for an additional 45,000 metric tons of potash (the "Work"), all as more specifically described in the design plans, drawings and specifications referenced in this Contract to be reviewed and initialed by the Port's Project Manager as provided in Section 2. A map showing the layout of the expanded Bulk Cargo Facility and the amended lease area is attached as **Exhibit B**.

### **1.2 Relationship of Parties**

Portland Bulk shall provide everything necessary for the Project, including without limitation all design services, construction management, labor, materials, and equipment. The Port shall have the right to review and disapprove the design and construction to the extent necessary to protect the Port's interest in its real property and to protect the interests of the bondholders for the Revenue Bonds ("Bondholders"). To comply with requirements under the Revenue Bonds, the Port will hold title to the Bulk Cargo Facility, including without limitation all improvements to the Bulk Cargo Facility resulting from Portland Bulk's execution of the Project.

### **1.3 Port Access**

Portland Bulk shall give Port representatives full access to the Project Site and all off-site fabrication locations at all reasonable times during execution of the Project, when requested by the Port. A full-time Portland Bulk representative shall be available at the Project Site during all working hours at all times and during all phases of the construction activity.

## **2. CONTRACT DOCUMENTS**

### **2.1 Incorporated Documents**

This Contract incorporates, by reference, all of the following documents ("Contract Documents") whose terms shall collectively be deemed incorporated into this Contract as provided below:

A. Any Change Orders (defined in Section 14) or amendments to this Contract once reviewed and initialed by the Port's Project Manager (defined in Section 14) shall be deemed incorporated into this Contract;

B. The requirements of all permits and authorizations required by law for the performance of all Work required hereunder;

C. All construction and design plans, drawings and specifications referenced in this Contract, once such plans, drawings and specifications have been reviewed and initialed by the Port's Project Manager, shall be deemed incorporated into this Contract;

D. The Ordinance and all related financing documents, including the 2006 Facilities Lease;

E. An itemized and detailed schedule of values (costs) for the Project ("Schedule of Values"), attached as **Exhibit C**;

F. All other Exhibits attached to this Construction Contract;

G. Ground Lease; and

H. Amended Guarantee. The intent of this Contract is to incorporate, by reference, all requirements necessary for the execution and completion of the Project. Therefore, the applicable requirements of any document listed above shall be as binding as if directly set forth herein. In the event a direct conflict arises between any of the provisions in any two or more of the Contract Documents and the conflict cannot be resolved, the Ordinance and the 2006 Facilities Lease shall control.

### **2.2 No Port Representations**

By executing this Contract, Portland Bulk represents that it has carefully reviewed all of the incorporated Contract Documents in existence as of the effective date of this Contract, has visited the construction site and has thoroughly familiarized itself and its Subcontractors and Suppliers (as defined in Section 10.1) with all conditions under which the Work is to be performed. Portland Bulk is also familiar with all laws and permit requirements which pertain to the construction of the Project. Portland Bulk agrees that it has not relied upon, and has no right to rely upon, any representation made by the Port, other than those specifically set forth in the Contract Documents, in entering into this Contract.

### **2.3 Documents to be Reviewed**

Prior to beginning construction of any portion of the Project, Portland Bulk shall present to the Port, for Port review, three (3) copies of all shop drawings and outline specifications to be incorporated into the Project. The Port may disapprove all or part of

a drawing to the extent necessary to protect the Port's interests in the Port's property or to protect the bondholders of the Revenue Bonds.

#### **2.4 Review of Submitted Documents**

The Port shall review one set of all of the above-described submitted drawings and specifications within ten (10) working days of the Port's receipt thereof. The Port reserves the right to disapprove such drawings and specifications as specified below. If within such ten (10) day review period the Port notifies Portland Bulk that the drawings and specifications are not approved, the Port will also give Portland Bulk a written summary of the reasons for failure to approve within that ten (10) day period. The Port agrees that it will not contest drawings or specifications so long as they meet safety standards, do not violate or conflict with the environmental provisions and requirements of the Ground Lease, do not violate published Rivergate Development Standards (which Portland Bulk agrees to strictly adhere to) or this Contract. Portland Bulk will not contract for or purchase any Major Equipment based on the drawings or specifications until the Port has reviewed the drawings and specifications. As used in this Contract, the term "Major Equipment" shall mean any piece of equipment or system with a cost of FIFTY THOUSAND DOLLARS (\$50,000) or more.

### **3. COMMENCEMENT OF WORK**

#### **3.1 Work Schedule**

Substantial Completion (defined in Section 6.1) of the Project shall occur on or before December 31, 2007 unless expressly excused under Section 11.2 or 11.3 of this Contract or extended with the written consent of the Port.

#### **3.2 Bonds**

Portland Bulk shall obtain a performance bond and a labor and materials payment bond, acceptable to the Port, each in the amount of the total cost of the Project, to ensure the construction of the Project in accordance with the drawings and specifications created in accordance with Section 2 and to ensure payment of all labor and materials suppliers by Portland Bulk and its Contractors and Subcontractors. The Port shall be added as a co-obligee via rider. Such payment and performance bonds shall be maintained, without interruption, from the Effective Date of this Contract and shall bond all of the Work in the manner aforesaid covered by this Contract until at least one (1) year after the date of Final Completion (defined in Section 7.1). All bonds required under this Contract shall be executed by sureties: (1) licensed to conduct business in the State of Oregon, and (2) named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Accounts, U.S. Treasury Department.

#### **3.3 Permits and Plans**

No Work shall be undertaken until Portland Bulk has procured and paid for all municipal and other government permits and authorizations required to proceed and has met all bonding and insurance requirements of this Contract. Proof of all payment and performance bonds and all insurance required under this Contract must also be provided to the Port prior to the commencement of any Work. Once authorized, all Work shall be performed in a good and workmanlike manner with reasonable dispatch and in

#### **4- Bulk Cargo Facility Construction Contract**

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conformance to all requirements of this Contract, as well as to all relevant laws, regulations, plans and permits.

#### **3.4 Port Representative**

The Port will make a Port representative available to the Project Site within four (4) hours of request by Portland Bulk, Monday through Friday, during normal business hours.

### **4. CONTRACT AMOUNT**

#### **4.1 Project Cost**

The Port, through the use of Revenue Bond proceeds, to be administered by the bond trustee named pursuant to the Ordinance ("Trustee"), shall request the Trustee to pay Portland Bulk for the performance of Work on the Project. The total amount available from Revenue Bond proceeds under this Contract, referred to as the "Contract Sum", is anticipated to be ELEVEN MILLION SIX HUNDRED TEN THOUSAND DOLLARS (\$11,610,000). The Contract Sum may be increased to up to FOURTEEN MILLION DOLLARS (\$14,000,000) provided that payment and performance bonds acceptable to the Port for this increase in the Contract Sum are supplied. All construction must be accomplished in accordance with the Schedule of Values. All Revenue Bond funds shall be held in a trust account and shall be disbursed to Portland Bulk by the Trustee in a manner consistent with the terms of the Ordinance and this Contract.

#### **4.2 Excess Expenditures**

In the event that the cost of the Project exceeds the maximum allowed Contract Sum, Portland Bulk agrees to be responsible for all such excess costs, expenses and amounts. It is understood that neither the Port nor the Bondholders shall in any way be responsible for any excess expenses or costs. Portland Bulk agrees to fully defend, indemnify and hold harmless both the Port and all Bondholders against any claim to the contrary. Portland Bulk also agrees that it must, in any event, complete the Project in strict accordance with all Contract Documents. Portland Bulk will have an irrevocable direct pay letter of credit in place at all times to ensure full repayment of the Revenue Bonds if this Project is not completed by Portland Bulk.

#### **4.3 No Profit**

Portland Bulk understands that Revenue Bond proceeds may not be used to pay any contractor profit if the contractor is related to the lessee (Portland Bulk) of the Project. Consequently, Portland Bulk agrees that its billings will not include any profit for itself or any of its affiliates.

### **5. PAYMENTS**

#### **5.1 Monthly Progress Payments**

Subject to the terms and provisions of the Ordinance and this Contract, Portland Bulk shall be entitled to receive monthly progress payments ("Progress Payments") based upon the work successfully performed during the preceding month and corresponding to the Schedule of Values, less Retainage as described in Section 5.3.

## **5.2 Application for Progress Payments**

Application for Progress Payments shall be made by a monthly written billing from Portland Bulk to the Port. Such billing must be accompanied by a requisition form completed by Portland Bulk for submission to the Trustee, in accordance with the requirements of the Ordinance. Each billing shall describe the Work accomplished and the materials incorporated in that Work. Back-up invoices from all Subcontractors must also be supplied along with each billing, as required by the Trustee and/or the Port. In the event Portland Bulk wishes to contest the invoice of any subcontractor or supplier for Work done or materials provided during that Progress Payment period, it may do so and still be paid its Progress Payment provided that the Progress Payment shall not include payment to Portland Bulk of any amounts that may be attributable to such disputed claim. Unless the Port disagrees with Portland Bulk's request for payment or the materials submitted by Portland Bulk are incomplete, the Port will approve the application for progress payment within seven (7) days of its receipt from Portland Bulk and will submit it to the Trustee within that same seven (7) day period with a request that the Trustee promptly make the payment requested. Before Portland Bulk may submit application for its next Progress Payment, it must supply the Port with reasonable verification (which verification may be in the form of acknowledgments by the Subcontractors on their invoices that previous payments have been received) that the previous Progress Payment received by Portland Bulk has been properly applied to the invoices submitted as back-up for that previous Progress Payment.

## **5.3 Retainage**

The Port will constructively "withhold" five percent (5%) from each Progress Payment as retainage ("Retainage"). The Retainage shall be held in escrow by the Trustee until all Work is completed in full accordance with the Contract Documents and until Portland Bulk provides proof satisfactory to the Port that all bills for labor and materials or other items relating to the Project have been paid in full.

## **5.4 Audit**

The Port reserves the right, upon reasonable notice, to audit all books and records of Portland Bulk pertaining to this Project, and to require Portland Bulk to exercise the same rights with respect to its Subcontractors and permit the Port to participate in any such audit, in order to verify the accuracy of all invoices submitted to the Port and to verify payment of all Subcontractors and Suppliers.

## **5.5 Withholding of Payment**

Any payments, including Progress Payments and/or Final Payment and Retainage, may be withheld on account of any of the following: defective or incomplete Work not remedied; claims filed against the Port based on action or inaction of Portland Bulk or any of its Subcontractors or Suppliers; failure to make payments to Subcontractors or Suppliers for labor, materials or equipment; damage, unreimbursed by insurance proceeds, to the Port or another contractor, Subcontractor, or Supplier caused by Portland Bulk or one of its Subcontractors, Suppliers or other agents; persistent failure to complete or carry out the Work in accordance with and as required by this Contract; reasonable indication that the Project will not be completed in full accordance with all the Contract

Documents; or the filing of a lien against the Bulk Cargo Facility, the Project Site or against any other Port property resulting directly or indirectly from this Contract. With the exception of Retainage, which may be withheld in full in the event of any of the above, where the reason for withholding a Progress Payment or Final Payment only affects part of that payment due, the amount withheld shall not exceed the Port's reasonable estimate of the amount in dispute or needed to cover or remedy any of the above described situations.

#### **5.6 Lien/Claims**

From Revenue Bond proceeds received from the Trustee, Portland Bulk shall timely provide and pay for all labor, utilities, materials, taxes, and equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of this Contract, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Project. If Portland Bulk fails, neglects, or refuses to make prompt payment of any undisputed claim for labor or services furnished to any Subcontractor or any Supplier in connection with this Contract, then as the claim becomes due the Port may, but is not obligated to, pay the claim to the person or entity furnishing the labor, materials or services and charge the amount of that payment back against funds due to Portland Bulk. In the event that the Port makes any such payment, Portland Bulk hereby designates and appoints the Port as Portland Bulk's agent and attorney-in-fact to apply for and receive such amounts directly from the Trustee. The Port's payment of any claim under this paragraph shall not relieve Portland Bulk or its surety from any responsibility for such claims. If any valid lien or other valid claim should remain unsatisfied after all payments have been made, Portland Bulk must reimburse to the Port any monies that the Port has paid in order to discharge such lien or claim, including all costs and reasonable attorney fees incurred in connection therewith.

### **6. SUBSTANTIAL COMPLETION**

#### **6.1 Definitions**

The terms "Substantial Completion" or "Substantially Complete," as used in this Contract, shall mean that construction of the Project has progressed to a point where, in the written opinion of the Port's engineer, the Project would be operational for the commercial handling of potash, with increased storage capacity for an additional 45,000 metric tons of potash.

#### **6.2 Notice of Substantial Completion**

When Portland Bulk considers the Project to be Substantially Complete, Portland Bulk shall give the Port written notice of Substantial Completion and shall provide the Port with Portland Bulk's most complete set of field mark-up drawings. The Port shall then make a physical inspection of the Project within ten (10) working days, to determine that all Work is acceptable, Substantially Complete, and has been done in accordance with the terms, specifications and conditions of this Contract. Upon request, Portland Bulk shall make a manager available to accompany the Port on such a walk through. If the Port determines that the Project is not Substantially Complete with respect to such phase, the Port shall give Portland Bulk written notice of any deficiencies within fifteen

(15) days of receipt of Portland Bulk's notice of Substantial Completion to the Port. Upon correction of the deficiencies, the Port shall promptly provide the opinion of its engineer, as described in Section 6.1. Within sixty (60) days after Substantial Completion is achieved, Portland Bulk shall deliver to the Port complete and fully-detailed "AS-BUILT" drawings thereof prepared by an engineer licensed by the State of Oregon.

## **7. FINAL COMPLETION AND FINAL PAYMENT**

### **7.1 Final Payment**

"Final Payment", meaning the entire unpaid balance of the actual Contract Sum shall be paid to Portland Bulk within thirty (30) days of the Port's concurrence that the Project has been fully completed in strict accordance with the Contract Documents and Portland Bulk has fulfilled all terms of this Contract ("Final Completion"). Within a reasonable time after notice of Final Completion from Portland Bulk, not to exceed ten (10) working days, the Port and Portland Bulk shall make a joint inspection of the Work to determine whether the Project is complete. If the Port does not consider the Project to have reached Final Completion, it will notify Portland Bulk, in writing, giving it a list of items to be completed or corrected ("Punch List"). After completion of all items on the Punch List to the satisfaction of the Port, and Portland Bulk has given the Trustee and the Port the certificate described in Section 3.4 of the 2006 Facilities Lease, Final Payment will be made. After Final Completion, Portland Bulk shall deliver to the Port, as soon as practical, all maintenance and operating instructions, manuals, test results, schedules, guarantees, bonds, certificates of inspection, and other relevant requested documents to the Port.

### **7.2 Requirements for Release of Retainage**

Final Payment shall not be made, and Retainage shall not be released, until Portland Bulk submits to the Port and the Trustee:

A. An affidavit that all payrolls, bills for materials and equipment, and all indebtedness connected with the Work for which the Port or its real property might in any way be responsible or lienable, have been paid or otherwise satisfied or provided for to the satisfaction of the Port;

B. If requested by the Port, receipts establishing payment or satisfaction of all obligations, including releases and waivers of liens arising out of this Contract to the extent necessary to establish that all obligations have been met; and

C. Any other data the Port may reasonably request or is entitled to receive under this Contract.

Once the above have been submitted, they will be promptly reviewed by the Port and the Trustee. If acceptable, Final Payment will be made and the Retainage will be released. If not acceptable, the Port and/or the Trustee will promptly advise Portland Bulk of what further information or action is needed in order for Final Payment and release of Retainage to be authorized.

### **7.3 No Waiver of Claims by Port**

The making of Final Payment and the release of all retainage shall not operate to waive, or otherwise release Portland Bulk from any claim the Port may have against Portland Bulk related to the Project or this Contract.

### **7.4 Waiver of Claims by Portland Bulk**

Acceptance of Final Payment by Portland Bulk shall constitute a waiver of all known and unknown claims by Portland Bulk against the Port pertaining to this Contract or the Project, except claims of which Portland Bulk has given the Port prior written notice.

## **8. PORT RIGHT TO STOP WORK**

If Portland Bulk fails to correct defective Work, fails to carry out Work in accordance with this Contract or is in violation of any laws or any significant requirements of this Contract at any time during the term of this Contract or prior to final completion of the Project, the Port, by a written order, may immediately require the Work to stop until the cause for such "Stop Work Order" has been remedied. The Port will make a representative available to the construction site, upon request of Portland Bulk, to discuss any issues involving any Stop Work Order or to inspect in order to allow a prompt lifting of the Stop Work Order once the problem is remedied. Such representative will be available to visit the site within four (4) hours of such request. The parties agree to mediate any disputes concerning a Stop Work Order pursuant to the mediation process set forth in Section 18.4.

## **9. OTHER PORTLAND BULK RESPONSIBILITIES**

### **9.1 Supervision of Work**

In addition to all other responsibilities set forth herein, Portland Bulk shall supervise and direct all Work on the Project, using its best skill and attention. Portland Bulk shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work in accordance with this Contract.

### **9.2 Engineering Firm**

Portland Bulk has hired the engineering and consulting firm of Sandwell, Inc. This firm shall perform all design and prepare all construction drawings for the construction of the Project. Portland Bulk may change its engineering firm if it deems a change appropriate but will notify the Port of such a change.

### **9.3 Wages**

Portland Bulk agrees that the hourly rate of wage to be paid to or by any Subcontractors to workers performing Work on the Project within the State of Oregon shall not be less than the Bureau of Labor and Industries prevailing rate of wage for an hour's work in the same trade or occupation in the locality where the labor is performed ("Prevailing Wage Rates") in effect on the date of execution of this Contract. If the rate goes up subsequent to full execution of this Contract, Portland Bulk shall pay the higher

rate only if required by Oregon law. Portland Bulk shall make payment promptly, as due, to all persons supplying labor or material to the Project.

#### **9.4 Payment of Fee Required**

Portland Bulk shall ensure that the fee required by ORS 279.375(1) is paid to the Commissioner of the Bureau of Labor and Industries pursuant to the Commissioner's administrative rule.

#### **9.5 Workers' Compensation**

Portland Bulk agrees that all workers hired to do any work hereunder shall be covered by Workers' Compensation insurance as required by the laws of the State of Oregon. Portland Bulk shall pay all contributions or amounts due to maintain such insurance and shall ensure that all of its Subcontractors also provide workers' compensation coverage and pay their premiums when due. All subject employers working under this Contract shall be either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

#### **9.6 Withholdings**

Portland Bulk shall pay to the appropriate government agency all sums withheld from employees' pay checks, including without limitation payment to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167.

#### **9.7 Hours of Work**

As a condition of this Contract, no person may be employed in the performance of this Contract within the State of Oregon for more than ten (10) hours in any one day, or forty (40) hours in any one (1) week, except as allowed by Oregon law. In such cases, that person shall be paid at least time and a half pay: (i)(A) for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week with the work week is five consecutive days, Monday through Friday; or (B) for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (ii) for all work performed on Saturday, Sunday, New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November, Christmas Day on December 25, or if one of those named holidays falls on a Sunday, on the following Monday or, if it falls on a Saturday, on the preceding Friday. The requirements of this Section are subject to the exceptions established by ORS 279C.540.

#### **9.8 Contributions to the Industrial Accident Fund**

As a condition of this Contract, Portland Bulk shall pay all contributions or amounts due the Industrial Accident Fund from Portland Bulk or its subcontractor incurred in the performance of this Contract.

#### **9.9 Payment of Claims by the Port**

If Portland Bulk fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Portland Bulk or a Subcontractor by any person in connection with this Contract as the claim becomes due, the Port may pay the claim to

the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor pursuant to this Contract.

#### **9.10 Payment of Subcontractors**

As a condition of this Contract, if Portland Bulk or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, Portland Bulk or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Portland Bulk or the first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the Port or from Portland Bulk, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

#### **9.11 Construction Contractors Board Complaint**

If Portland Bulk or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

#### **9.12 Liens and Claims Prohibited**

As a condition of this Contract, Portland Bulk shall not permit any lien or claim to be filed or prosecuted against the Port, the state, any county, any school district, any municipality, any municipal corporation, or any subdivision thereof, on account of any labor or material furnished pursuant to this Contract.

#### **9.13 Drug Testing Program**

Portland Bulk shall demonstrate that an employee drug testing program is in place.

#### **9.14 Prompt Payment - First-Tier Subcontracts**

Portland Bulk shall include in each subcontract for property or services entered into by Portland Bulk and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract: (a) a payment clause that obligates Portland Bulk to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to Portland Bulk by the Port under this Contract; and (b) an interest penalty clause that obligates Portland Bulk, if payment is not made within 30 days after receipt of payment from the Port, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. The interest shall be as provided by ORS 279C.580.

#### **9.15 Prompt Payment - Lower-Tier Subcontracts**

Portland Bulk shall include in each of Portland Bulk's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (3) of ORS 279C.580 in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

#### **9.16 Medical Payments**

To the extent required by Oregon law, Portland Bulk shall (i) promptly, when due, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Portland Bulk, of all sums which Portland Bulk agrees to pay for such services and all moneys and sums which Portland Bulk collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service; and (ii) shall ensure that Subcontractors do the same for their employees.

#### **9.17 Discovery of Hazardous Substances**

In the event Portland Bulk or any of its Subcontractors encounters materials on the Project Site which are reasonably believed to be a "Hazardous Substance," as defined in the Ground Lease, Portland Bulk shall immediately report the existence of such condition to the Port and do the following: (i) if such Hazardous Substance is within the "Restricted Areas" described in the CAMMP (as defined in the Ground Lease), Portland Bulk shall comply with all requirements of the CAMMP and associated Implementation Plan (as defined in the Ground Lease); and (ii) if such Hazardous Substance is not within the "restricted areas" described in the CAMMP, Portland Bulk shall immediately stop all Work in the area affected, and shall not resume the Work until the Port and Portland Bulk mutually agree, in writing, that the area has been made safe, as required by the law, and that the Work can again go forward.

#### **9.18 Payment of Taxes**

Unless expressly provided otherwise in this Contract, Portland Bulk shall pay all taxes that are legally in effect pertaining to the Bulk Cargo Facility and shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for the proper construction and completion of the Project.

#### **9.19 Warranties**

Portland Bulk warrants to the Port that all materials and equipment furnished under this Contract will be new unless otherwise specified and approved by the Port herein or in writing at a later date, and that all Work will be of good quality, free from defaults and defects, and in conformance with the terms of this Contract. All Work not conforming to these requirements, including substitutions not authorized, shall be considered defective. If required by the Port, Portland Bulk shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### **9.20 Compliance with Laws**

Portland Bulk shall comply with all laws, codes, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work on the Project, including all applicable public contracting laws. Unless excused in a specific instance in writing by the Port, Portland Bulk shall solicit sealed bids for each construction subcontract to be funded with Port bond sale proceeds. Solicitation of bids shall be advertised in the Daily Journal of Commerce. Portland Bulk may establish minimum bidder qualifications. Bids shall be opened publicly in the presence of a Port representative. A subcontract may be awarded only to the qualified bidder offering the lowest price, provided Portland Bulk may take reasonable measures approved by the Port to compare bids that are based on slightly different work scopes. Portland Bulk shall obtain the Port's concurrence before rejecting a low bidder as unqualified.

#### **9.21 Responsibility for Acts and Omissions**

Portland Bulk shall be responsible to the Port for the acts and omissions of the employees of Portland Bulk, and anyone performing Work on the Project, including without limitation Portland Bulk's Subcontractors at any tier, Suppliers, and their respective agents, and employees.

#### **9.22 Fees and Licenses**

Portland Bulk shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall defend, indemnify and hold the Port harmless from all loss on account thereof, arising in connection with the Project.

#### **9.23 Restoration Requirements**

Unless the alteration thereof is provided for under the Contract Documents, Portland Bulk shall restore existing utilities, roadway, rail line and landscaped areas on the Project Site and on adjoining lands that were under Portland Bulk's care, custody, or control, or were affected by its construction activities, including but not limited to, water, sewer, gas and rail tracks, to the condition they were in prior to the commencement of construction activity on the Project Site. Portland Bulk shall clear the Project Site and utilized adjoining lands of all debris, and shall clean-up and grade the Project Site and any disturbed adjoining lands to the Port's reasonable satisfaction upon completion of all construction.

#### **9.24 Safety**

Portland Bulk shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Portland Bulk shall be responsible for OSHA compliance, and shall provide all reasonable protection to prevent damage, injury, or loss to: (1) all persons on the Project Site, including, but not limited to, employees of the Port, Portland Bulk, and all Subcontractors and Suppliers; and (2) the Project and all materials and equipment to be incorporated into the Project.

## **10. SUBCONTRACTORS**

### **10.1 Definition of Subcontractor and Supplier**

For purposes of this Contract, a "Subcontractor" is any person or entity who has a contract with Portland Bulk or with any other Subcontractors of Portland Bulk to provide services on the Project, or who otherwise provides any service on the Project. A "Supplier" is any person or entity who provides or delivers materials, equipment or other supplies to the Project or for use on the Project.

### **10.2 Identification of Subcontractors and Suppliers**

Portland Bulk shall furnish to the Port, in writing, the names and current addresses and telephone numbers of all Subcontractors performing Work on the Project and for all Suppliers for the Project, including without limitation Subcontractors and Suppliers that may be added after Portland Bulk provides its first list to the Port. If allowed by law, Portland Bulk shall not contract with any Subcontractor or Supplier to whom the Port may have a reasonable objection.

### **10.3 Subcontractor Requirements**

All Subcontractor contracts shall require that each Subcontractor, to the extent of the Work to be performed by the Subcontractor, be bound by the terms of this Contract and that the Subcontractor assumes, toward Portland Bulk, all the obligations and responsibilities that Portland Bulk has, by this Contract, assumed toward the Port. The responsibility of any such Subcontractor under the preceding sentence shall apply only to the Work performed or to be performed by the Subcontractor and shall not apply to the responsibilities assumed under this Contract by Portland Bulk which do not impact or involve the Work performed or to be performed by the Subcontractor. Under no circumstances, however, shall privity of contract be deemed to exist between the Port and any Subcontractor. No Subcontractor is intended to be a third-party beneficiary of this Contract. Furthermore, the Port shall not be obligated to pay or to provide for the payment of Subcontractors, except as required by law.

### **10.4 No Contractual Relationships**

Nothing contained in this Contract shall be deemed to create any contractual relationship between the Port and any Subcontractor or Supplier.

### **10.5 DBE, MBE, WBE and ESB Subcontractors**

Portland Bulk will use good faith efforts in accordance with the standards under ORS 200.045 to use and/or employ Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Emerging Small Business Enterprises as Subcontractors in all aspects of the performance of this Contract.

## **11. TIME AND PENALTY PROVISION**

### **11.1 Time of Essence**

All time limits stated in this Contract are of the essence. Portland Bulk shall perform all Work expeditiously and achieve Substantial Completion within the time provided by this Contract.

### **11.2 Force Majeure**

If Portland Bulk is delayed at any time in the progress of the Work by changes ordered in the Work by the Port, by major labor disputes, unexpected changes in government laws or regulations which cause significant delays in performance beyond the control of Portland Bulk, a serious fire, unusual delay in transportation, severe weather conditions not subject to being reasonably anticipated, discovery of Hazardous Substances, or any other extraordinary causes beyond Portland Bulk's reasonable control or anticipation, then Portland Bulk shall be granted a reasonable extension of time to complete this Contract. In any case, Portland Bulk must immediately advise the Port of any schedule delay encountered, the reasons therefore and the probable duration of such delay. This provision shall not relieve Portland Bulk from using its best efforts to meet the schedule or to avoid or remove such causes with all reasonable diligence.

### **11.3 Unavoidable Permitting Delays**

If Portland Bulk cannot obtain permits required to build the Project due to no fault or delay on the part of Portland Bulk, then the time frame for Substantial Completion of this Contract may be extended as follows: If a delay in the issuance of the permit caused construction to be delayed, then this Contract shall be expanded for the same period of time as construction was delayed by the failure to issue the permit.

## **12. ENVIRONMENTAL INDEMNIFICATION**

In addition to all other indemnities provided for by this Contract, under the Contract Documents or by law, and in addition to all of the provisions of the Ground Lease, including but not limited to those relating to clean-up and remediation of any Hazardous Substance Release (as that term is defined therein) which shall all also apply to this Construction Contract, Portland Bulk shall be solely responsible for and agrees to defend, indemnify, and hold harmless the Port from and against all Environmental Costs (as defined in the Ground Lease) claimed or assessed against the Port arising, in whole or in part, directly or indirectly, from acts or omissions of any person or entity, at or about the Project Site, in any way affiliated with Portland Bulk, on or after the Effective Date of this Contract, or earlier if caused by Portland Bulk, Portland Bulk's Subcontractors or Suppliers, or their respective employees, Subcontractors, Suppliers, consultants, agents, or invitees. Portland Bulk shall not be required to defend, indemnify, or hold harmless the Port against any environmental claims for which the Port is responsible under the Ground Lease. This indemnification shall require Portland Bulk to reimburse the Port for any diminution in value of the Project Site or other adjacent or nearby Port property, caused by Hazardous Substances (as defined in the Ground Lease) contamination that is Portland Bulk's responsibility under this Contract or Portland Bulk's responsibility under the Ground Lease, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Project Site or any other Port property, including damages arising from any adverse impact on marketing of space in or near the Project Site, including other Port property. Portland Bulk's obligations shall not apply if the Hazardous Substances were placed on or about the Project Site by the Port, the Port's agents or invitees or were present on the Project Site prior to Portland Bulk's entry onto the Project Site; provided, however, that Portland Bulk's obligations shall extend to

exacerbation by Portland Bulk or its Subcontractor(s) of existing Hazardous Substances contamination, but only to the extent of the exacerbation. This Environmental Indemnity is in addition to, and not in lieu of, the general indemnity provision set forth in Section 13.1. Portland Bulk shall be responsible for site security during construction and shall be responsible for assuring that no person (other than the Port or agents or contractors of the Port) brings unauthorized Hazardous Substances onto the Project Site and for damage caused to the Project Site caused by vandalism to equipment or materials left on the site by Portland Bulk or its Subcontractors. The Port's responsibilities under federal law for marine security do not excuse Portland Bulk from its exclusive obligation to provide site security under this Contract. Portland Bulk will cooperate, to the fullest extent permitted by its insurance carrier, in order to select legal counsel acceptable to the Port, which acceptance shall not be unreasonably withheld or delayed, to defend any matter covered under this Section 12.

### **13. INDEMNITY, INSURANCE**

#### **13.1 General Indemnity**

In addition to all other indemnities provided for by this Contract, under the Contract Documents or by law, and in addition to all of the provisions of the Ground Lease, Portland Bulk shall be solely responsible for and agrees to defend, indemnify, and hold harmless the Port from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs"), which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (1) the act, omission or negligence of Portland Bulk, Portland Bulk's Subcontractors or Suppliers, or their respective partners, officers, directors, agents, employees, invitees, contractors or subcontractors or suppliers; (2) the use, occupation, management or control of the Project Site by Portland Bulk, whether or not due to Portland Bulk's own act or omission and whether or not occurring on the Project Site; (3) any condition created in or about the Project Site by any party (other than the Port or an agent or an invitee of the Port while given access to the Project Site by the Port), including any accident, injury or damage occurring on or about the Project Site; (4) any breach, violation or nonperformance of any of Portland Bulk's obligations under this Contract; (5) any damage caused by Portland Bulk or any of its Subcontractors or Suppliers, or any of their respective consultants, employees, subcontractors, suppliers, agents or invitees on or to the Project Site or to any other properties which result from the activities associated with the construction of the Project. Portland Bulk will cooperate, to the fullest extent permitted by its insurance carrier, in order to select legal counsel acceptable to the Port, which acceptance shall not be unreasonably withheld or delayed, to defend any matter covered under this Section 13.1.

#### **13.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Portland Bulk under this Contract. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure

full performance of all terms and conditions of this Contract. All insurance required to be carried by Portland Bulk under this Contract shall meet the following minimum requirements:

#### **13.2.1 General**

On or before the Effective Date and throughout the term of this Contract, Portland Bulk shall provide the Port with certificates of insurance establishing the existence of all insurance policies required under this Section 13. No insurance policy may be canceled without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during this entire Contract. The Port shall also be given certified copies of Portland Bulk's policies of insurance, upon request.

#### **13.2.2 Additional Insured/Loss Payee**

With respect to claims arising out of this Contract, the Port shall be named as an additional insured in each required policy, except workers' compensation, and, for purposes of damage to the Project Site, as a loss payee. Such insurance shall not be invalidated by any act, neglect or breach of contract by Portland Bulk. If required by the Ordinance or the 2006 Facilities Lease, the Trustee shall also be named as an additional insured and as a loss payee and shall have the superior right to the insurance proceeds.

#### **13.2.3 Primary Coverage**

The required policies shall provide that the coverage is primary with respect to the operations of Portland Bulk, and will not require any contribution from any insurance or self-insurance carried by the Port.

#### **13.2.4 Portland Bulk Ground Lease Coverage**

If Portland Bulk's general liability insurance required to be provided pursuant to the Ground Lease is also intended to cover its operations under this Contract, Portland Bulk shall verify with its insurer that the coverage provided also meets the requirements of this Contract. Required policy limits can be comprised of a combination of primary and excess liability coverage.

#### **13.2.5 Carrier Rating**

All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or equivalent.

### **13.3 Required Insurance**

At all times during this Contract, Portland Bulk shall provide and maintain the following types of coverage:

#### **13.3.1 General Liability Insurance**

Portland Bulk shall maintain an occurrence form commercial general liability policy (including coverage for broad form contractual liability, independent contractors, and products-completed operations, insuring against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Project Site or occasioned by

reason of the operations of Portland Bulk and its Subcontractors under this Contract. Coverage shall be in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence.

#### **13.3.2 Automobile Liability Insurance**

Portland Bulk shall maintain business automobile liability insurance covering the loading and unloading of all owned, hired, and non-owned automobiles used in connection with this Project. The amount of coverage shall be not less than ONE MILLION DOLLARS (\$1,000,000) per accident.

#### **13.3.3 Contractors Pollution Liability**

Portland Bulk shall maintain occurrence form contractors pollution liability coverage insuring against liability and clean-up costs for sudden and accidental pollution on or from the Project site. Coverage shall include liability and clean-up costs for exacerbation of existing pollution on the Project Site, but only to the extent of such exacerbation.

#### **13.3.4 Builder's Risk**

Portland Bulk shall maintain, in full force and effect during this Contract, "all risk" ("Special Causes of Loss") builder's risk coverage in an amount equal to one hundred percent (100%) of the value of the Project. Coverage shall include: (1) form work in place; (2) all materials and equipment on site to the extent permitted by the policy; (3) all structures, including temporary structures; and (4) all supplies related to the Work being performed.

#### **13.3.5 Workers' Compensation Insurance**

Portland Bulk shall maintain in force Workers' Compensation insurance or self-insurance for all of Portland Bulk's employees working on the Project Site, including coverage for Employer's Liability, and, if applicable, coverage under the Longshore and Harbor Workers' Compensation Act. Portland Bulk shall also ensure that all Subcontractors and Suppliers maintain Workers' Compensation insurance in accordance with all applicable laws.

### **14. CHANGES IN WORK**

Any change to the design plans, drawings and specifications referenced in this Contract, once such plans, drawings and specifications have been reviewed and initialed by the Port's Project Manager as provided in Section 2 (including all labor and materials) must be authorized by a written "Change Order" signed by "Project Managers" for the Port and Portland Bulk. Project Managers are currently as follows: for the Port: Dave Dittmer; for Portland Bulk: Gerry Tincher. Portland Bulk shall pay all costs associated with such a change if the final cost of the Project exceeds the maximum Contract Sum set forth in Section 4.1, unless the Port agrees otherwise, in writing. Portland Bulk shall update, keep and maintain a current Total Project Cost Estimate, in substantially the same form as shown in attached **Exhibit C**, which shall include all such Change Orders, cost overruns, and other cost adjustments. The Port shall be supplied with a copy of any updated Total Project Cost Estimate. All Change Orders will include conforming

changes in any of the Contract design documents, completion times, and the cost of any modification. Work shall be changed and the completion time shall be modified only as set out in the written Change Order. Portland Bulk shall promptly provide the Port with copies of all Change Orders, regardless of dollar amount. All Change Orders are incorporated by reference into this Contract as soon as received and approved by the Port.

## **15. WARRANTIES**

### **15.1 Warranties of Portland Bulk**

Portland Bulk warrants to the Port that all equipment and materials provided under this Contract will be new unless otherwise provided in this Contract and free from defects in material and workmanship, under normal use and conditions, as indicated by specifications, when operated and maintained in accordance with standard industry operating procedures and maintenance for a bulk cargo operation of this nature. The warranty obligation of Portland Bulk under this Section is limited to the repair or replacement of any part that may prove to be defective within one (1) year from the date of Final Completion of the entire Project or one (1) year from the date the part is put into use, if later, provided Portland Bulk is given written notification of such claimed defect by the Port. Portland Bulk also agrees to assign to the Port all component manufacturers' warranties given to Portland Bulk to the extent possible, or if not, to secure remedies under such warranties for the benefit of Port. In no event, however, shall such assignment release Portland Bulk of its primary liability hereunder.

### **15.2 Warranty of Title & Fitness for Particular Purpose**

Portland Bulk warrants that title to all Work, materials, and equipment incorporated into the Project will pass to the Port, free and clear of all liens, claims, security interests, or encumbrances. Portland Bulk also warrants that this Project, as constructed by Portland Bulk, will be fit for the particular purpose Portland Bulk intends to use it for.

## **16. DEFAULT**

### **16.1 Material Breach**

The following shall constitute a "Material Breach" hereunder:

- i. Portland Bulk files for bankruptcy, or an involuntary bankruptcy is filed, or Portland Bulk is adjudged a bankrupt;
- ii. Portland Bulk makes a general assignment for the benefit of creditors or a receiver is appointed (either voluntarily or involuntarily) as a result of insolvency;
- iii. Portland Bulk's Work does not meet the requirements or completion time frame of this Contract;
- iv. Portland Bulk fails to make timely payment to Subcontractors or Suppliers for materials or labor, or any lien is filed against the Project Site;
- v. Portland Bulk violates any laws, ordinances, rules, regulations or the orders of any public authority having jurisdiction; or

vi. Portland Bulk otherwise violates any applicable provision of this Contract.

#### **16.2 Notice of Material Breach and Cure Period**

If a Material Breach shall occur, the Port shall give written notice to Portland Bulk of the Material Breach, stating the nature of the Material Breach and the required cure for the Material Breach. Portland Bulk shall have twenty (20) days after receipt of the notice of the Material Breach from the Port during which to cure the Material Breach. If the Material Breach cannot reasonably be cured within twenty (20) days but Portland Bulk is diligently pursuing the cure, then the cure period will be extended by the Port to allow a reasonable time to cure, unless such an extension would cause serious harm to the Port and/or Bond holders.

#### **16.3 Remedies Following Default**

If Portland Bulk does not cure or reasonably commence cure within the twenty (20) day period, then the Port shall be entitled to declare this Contract to be in "Default" and may then immediately and without further opportunity to cure, terminate this Contract and take possession of the Project site and of all materials and equipment previously paid for by the Port or with proceeds from the Revenue Bonds. The Port may then finish the Project or restore the site to its preconstruction condition by whatever methods the Port may deem expedient. In addition to or in lieu of termination of this Contract, the Port may seek any and all other remedies available to it for breach of contract, both at law and in equity, as described in Section 16.6.

#### **16.4 Suspension of Payments**

In the event of the occurrence of a Material Breach, the Port's obligation to make payments to Portland Bulk pursuant to the Contract for defective work giving rise to the Material Breach shall be suspended or terminated (depending on whether Portland Bulk cures the Material Breach within a reasonable time or proceeds to a Default). In the event Portland Bulk cures the Material Breach, payments to Portland Bulk will resume. In the event Portland Bulk fails to cure within a reasonable time, then a Default shall automatically come into existence, the Port's obligation to make payments for the defective work giving rise to the Default shall cease and the Port shall be entitled to all other remedies set forth in this Contract.

#### **16.5 Claims on Bond/Right to Complete Project**

If Portland Bulk fails to cure a Material Breach, to correct defective Work under this Contract, or to carry out the Work in accordance with this Contract and as a result a Default is declared by the Port, the Port shall have the immediate right but not the obligation to make a claim on the performance bond and/or the labor and materials bond provided to the Port to complete the Project or to restore the Project Site to its preconstruction condition. The Port shall also be entitled to make a claim against the payment and performance bonds at any time if a delay in making such a claim would preclude or jeopardize the Port's ability to make such a claim against the payment and/or performance bonds. The Port shall also be entitled to make a claim directly against Canpotex as the guarantor of Portland Bulk's performance, as provided in Section 16.7 below. This right to make a claim on the performance and payment bonds is in addition

to and not in lieu of any other remedies the Port may have, at law or equity, for breach of this Contract and is also in addition to any other remedies set forth elsewhere in this Contract.

#### **16.6 Remedies Cumulative and Non-Exclusive**

Each right and remedy provided for in this Contract, and at law and in equity, shall be cumulative and shall be in addition to every other right and remedy, without limitation, including suits for money damages, injunctive relief and specific performance of this Contract. The exercise by the Port of any such rights and remedies shall not preclude the simultaneous or later exercise by the Port of any other such rights and remedies. All rights and remedies are non-exclusive.

#### **16.7 Canpotex Guarantee**

Performance and payment by Portland Bulk of all of its obligations, liabilities and indebtedness under all terms and conditions of this Contract are fully and unconditionally guaranteed by Canpotex as further provided in the Amended Guarantee.

### **17. ASSIGNMENT**

Portland Bulk's rights and responsibilities hereunder are not assignable.

### **18. OTHER CONDITIONS OR PROVISIONS**

#### **18.1 Warranty of Authority**

The individuals executing this Contract warrant that they have full authority to execute this Contract on behalf of the entity for whom they are acting.

#### **18.2 Entire Agreement**

This Contract represents the entire agreement between the Port and Portland Bulk with respect to the construction of the Project by Portland Bulk. It is understood and agreed by Portland Bulk that the Port and the Port's agents have made no binding representations or promises with respect to this Contract, except as expressly set forth herein, and that no claim shall be asserted by Portland Bulk against the Port for breach of any representations or promises not expressly stated in the Contract Documents. All other oral agreements or representations, if any, are hereby expressly waived by Portland Bulk.

#### **18.3 No Benefit to Third Parties**

The Port and Portland Bulk are the only parties to this Contract and as such are the only parties entitled to enforce its terms. Unless specifically provided otherwise in this Contract, nothing in this Contract gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

#### **18.4 Mediation**

Subject to limitations set forth herein, should any dispute arise between the Port and Portland Bulk concerning the terms of this Contract it is agreed that either party may call a special meeting for the resolution of such dispute, to be held at the Port's downtown

offices within three (3) working days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Port's Project Manager, Portland Bulk's Project Manager, and any other person who may be affected in any material respect by the resolution of such dispute. The Project Managers shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. If the dispute has not been resolved within five (5) working days after the special meeting has been held, such dispute will be submitted to nonbinding mediation prior to any litigation. Both the Port and Portland Bulk shall exercise good faith efforts to select a mediator who shall be compensated equally by both. The mediator shall be an Oregon-licensed attorney with experience with bulk cargo facilities, and general design and construction matters. Mediation will be conducted in Portland, Oregon. Both parties agree to exercise good faith efforts to resolve disputes covered by this Section through this mediation process. If the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party. Mediation shall not apply to any matters provided to be within the Port's discretion and shall not preclude either party seeking immediate injunctive relief or specific performance under this Contract in response to any dispute that poses an imminent threat of irreparable harm to such party, to the environment or to the health, safety, or security of persons or property. Notwithstanding the foregoing, with respect to any dispute for which the parties fail to reach resolution following mediation as described above, the parties may mutually agree to resolve such dispute by binding arbitration before an independent arbitrator mutually selected by the parties. Cost of any mediation or arbitration under this Agreement shall be shared equally by the parties, but each party will be responsible for its own attorney fees and expenses, if the parties choose to have attorneys represent them at such mediation or arbitration.

#### **18.5 Jurisdiction**

This Contract shall be governed by the laws of the State of Oregon without regard to its choice of law provisions. Venue is agreed to be in Multnomah County. All parties agree to submit to jurisdiction in the courts of the State of Oregon.

#### **18.6 Attorney Fees**

If suit or action is instituted in connection with any controversy arising out of this Contract, including any controversy involving any bankruptcy, the prevailing party shall be entitled to recover, in addition to all associated court and litigation costs, such sum as the court may adjudge reasonable as attorney fees, or, in the event of appeal, as allowed by the appellate court.

#### **18.7 Notices**

All notices, certificates or other communications required between the parties hereto shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

To the Port:                   The Port of Portland  
                                  Engineering Department

121 NW Everett St  
Portland, Oregon 97208  
(503) 944-7342 FAX (503) 944-7313  
Attention: Dave Dittmer

To Portland Bulk: Portland Bulk Terminals, L.L.C.  
c/o Gerry Tincher  
Canpotex Terminals Limited  
Suite 1111, 100 Park Royal West  
Vancouver, British Columbia, V7T1A2  
CANADA

With a Copy to: Canpotex Limited  
111 - 2nd Avenue South, Suite 400  
P.O. Box 1600  
Saskatoon, Saskatchewan, S7K 3R7  
CANADA  
Attn: Ted J. Nieman

Notice shall be deemed received by the addressee on the third business day after deposit in the United States or Canadian mail and addressed and sent as provided above. The Port, Portland Bulk and Canpotex may, by notice given to each other as provided herein, designate different persons or different addresses to which subsequent notices, certificates, or other communications shall be sent.

#### **18.8 Covenants, Conditions, and Restrictions**

This Contract is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, rights of way, and any other matters of record now or hereafter imposed upon the Project Site and to any applicable land use or zoning laws or regulations.

#### **18.9 No Implied Warranty by Port**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Contract. In no event shall the Port be deemed liable therefor. Portland Bulk shall be solely responsible for such matters.

#### **18.10 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Contract shall not be deemed a waiver of or to otherwise prejudice the Port's right to require strict performance of the same provision in the future or of any other provision of this Contract.

#### **18.11 Survival**

Any covenant or condition (including, but not limited to, indemnification agreements and warranties), set forth in this Contract, the full performance of which is not specifically required prior to the expiration or earlier termination of this Contract, and

23- Bulk Cargo Facility Construction Contract

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any covenant or condition which by their terms are to survive the termination of this Contract, shall survive the expiration or earlier termination of this Contract and shall remain fully enforceable thereafter.

#### **18.12 Partial Invalidity**

If any provision of this Contract is held to be invalid or unenforceable, the remainder of this Contract, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

#### **18.13 Contract Subject to Bonds and Ordinances**

This Contract shall be subject and subordinate to the Ordinance governing construction of the Project and to any other bond ordinances which may create liens and encumbrances on the land which constitutes the Project Site herein.

#### **18.14 Calculation of Time**

Unless otherwise referred to as "working days" or "business days", all periods of time referred to in this Contract shall include Saturdays, Sundays, and legal holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday. "Legal Holiday" shall mean any holiday observed by the United States Federal Government. Where the time frame is designated as "working days" or "business days" then Saturdays, Sundays and holidays shall not be counted in calculating the time frame.

#### **18.15 Headings**

The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Contract.

#### **18.16 Exhibits Incorporated by Reference**

All Exhibits attached to this Contract are incorporated by reference herein for all purposes.

#### **18.17 Execution of Multiple Counterparts**

This Contract may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

#### **18.18 No Limit on Port's Powers**

Nothing in this Contract shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers.

#### **18.19 Modification**

This Contract may not be modified or amended except by written instrument signed by the parties.

**PORTLAND BULK TERMINALS,  
L.L.C.**

By: \_\_\_\_\_  
Ted J. Nieman, Senior Vice President,  
General Counsel and Secretary

By: \_\_\_\_\_  
Dwayne N. Dahl, Vice President, Finance  
and Chief Financial Officer

**THE PORT OF PORTLAND**

By: \_\_\_\_\_  
Bill Wyatt, Executive Director

APPROVED AS TO THE LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By: \_\_\_\_\_  
Counsel for the Port of Portland

APPROVED BY COMMISSION ON:  
April 12, 2006

The undersigned Guarantor has entered into a separate Amended  
Guarantee, dated contemporaneously herewith, guaranteeing the full and complete  
performance of this Construction Contract.

**CANPOTEX LIMITED**

By: \_\_\_\_\_  
Ted J. Nieman, Senior Vice President,  
General Counsel and Secretary

By: \_\_\_\_\_  
Dwayne N. Dahl, Vice President, Finance  
And Chief Financial Officer

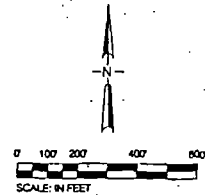
**GUARANTOR ACKNOWLEDGMENT**

The undersigned Guarantor hereby acknowledges receipt and review of  
this Construction Contract and all Exhibits thereto, on this 12<sup>th</sup> day of April,  
2006.

**CANPOTEX LIMITED**

By: \_\_\_\_\_  
Ted J. Nieman, Senior Vice President,  
General Counsel and Secretary

By: \_\_\_\_\_  
Dwayne N. Dahl, Vice President, Finance and  
Chief Financial Officer



CORPS OF ENGINEERS  
HARBOR LINE  
EST. FEB 9, 1968

POINT OF COMMENCEMENT  
4 1/4" BRASS DISK  
WITNESS CORNER IN CORNER  
SECTION 23 & 28  
N = 7823.70  
E = 8971.411

ORDINARY HIGH WATER  
LINE ELEV. 17.00  
ESTABLISHED FROM  
RECORDED SURVEY NO. 54844

AREA = 99.089 ACRES  
4,316,327 SF

T.P.O.B.

POWER SUBSTATION

10 WIDE POE  
POWERLINE BASED ON  
DATED MAR. 3, 1984  
CHG. NO. 1088

POE WOOD POWER  
POLE (TYP)

#### LEASE AREA LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN SECTIONS 23 & 28, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, MULTNOMAH COUNTY, OREGON, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT A WITNESS CORNER FOR THE ONE-QUARTER CORNER OF SECTIONS 23 & 28, SAID CORNER BEING NORTH 89°53'48" WEST A DISTANCE OF 1,805.35 FEET FROM THE TRUE ONE-QUARTER CORNER OF SECTIONS 23 AND 28, TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN;  
THENCE SOUTH 81° 29' 18" EAST, 168.78 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 32° 03' 34" EAST, 499.17 FEET; THENCE NORTH 35° 17' 20" EAST, 237.72 FEET;  
THENCE NORTH 35° 10' 40" EAST, 105.60 FEET; THENCE NORTH 40° 07' 40" EAST, 50.53 FEET;  
THENCE NORTH 44° 21' 07" EAST, 312.00 FEET TO A POINT OF CURVATURE;  
THENCE 344.98 FEET ALONG THE ARC OF A 700.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THROUGH A CENTRAL ANGLE OF 28° 14' 14" (THE LONG CHORD BEARS NORTH 59° 28' 00" EAST, 341.50 FEET) TO A POINT OF NON-TANGENCY;  
THENCE NORTH 18° 11' 35" WEST, 92.54 FEET; THENCE NORTH 46° 53' 55" WEST, 43.40 FEET;  
THENCE NORTH 43° 20' 05" EAST, 78.42 FEET; THENCE NORTH 50° 39' 42" EAST, 110.34 FEET;  
THENCE NORTH 34° 28' 36" EAST, 22.85 FEET; THENCE NORTH 54° 08' 41" EAST, 158.57 FEET;  
THENCE NORTH 48° 54' 24" EAST, 40.88 FEET; THENCE SOUTH 41° 14' 44" EAST, 104.00 FEET;  
THENCE SOUTH 78° 14' 44" EAST, 231.18 FEET; THENCE SOUTH 43° 32' 35" EAST, 28.38 FEET;  
THENCE SOUTH 10° 23' 38" WEST, 158.80 FEET; THENCE SOUTH 20° 48' 26" WEST, 75.52 FEET;  
THENCE NORTH 06° 27' 23" WEST, 21.06 FEET; THENCE SOUTH 20° 40' 09" WEST, 782.90 FEET;  
THENCE SOUTH 20° 13' 09" WEST, 875.28 FEET; THENCE NORTH 09° 21' 45" WEST, 43.84 FEET;  
THENCE SOUTH 23° 28' 15" WEST, 508.43 FEET; THENCE NORTH 24° 59' 09" WEST, 113.17 FEET;  
THENCE NORTH 35° 25' 48" WEST, 174.64 FEET; THENCE NORTH 63° 20' 55" WEST, 220.42 FEET;  
THENCE NORTH 78° 19' 52" WEST, 713.14 FEET; THENCE NORTH 18° 57' 40" EAST, 8.00 FEET TO A POINT OF NON-TANGENCY; THENCE 549.72 FEET ALONG THE ARC OF A 675.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THROUGH A CENTRAL ANGLE OF 48° 38' 43" (THE LONG CHORD BEARS NORTH 47° 42' 20" WEST, 534.88 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 68° 12' 28" WEST, 19.78 FEET; THENCE NORTH 23° 47' 34" WEST, 20.00 FEET;  
THENCE NORTH 85° 12' 28" EAST, 18.81 FEET TO A POINT OF NON-TANGENCY; THENCE 843.40 FEET ALONG THE ARC OF A 884.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THROUGH A CENTRAL ANGLE OF 55° 25' 06" (THE LONG CHORD BEARS NORTH 04° 18' 31" EAST, 818.57 FEET) TO THE TRUE POINT OF BEGINNING, CONTAINING 4,316,327 SQUARE FEET (99.089 ACRES) MORE OR LESS.

NOTE:  
BASIS OF BEARINGS IS PORT OF PORTLAND LOCAL PROJECTION (INTERNATIONAL FEET), PER PORT OF PORTLAND DRAWING MD RG 2003-3024.

#### EXHIBIT A

PORT OF PORTLAND PORTLAND, OREGON										DESIGNED BY: D. ANDERSON DRAWN BY: P. SHIELDS CHECKED BY: D. ANDERSON DATE: OCT 2005 SCALE: 1" = 300'		TERMINAL 5 CANPOTEX LEASE AREA EXHIBIT PLAT	
NO. DATE BY REVISIONS 1 10/10/05 D.A. 1 2 10/10/05 D.A. 2 3 10/10/05 D.A. 3 4 10/10/05 D.A. 4 5 10/10/05 D.A. 5 6 10/10/05 D.A. 6 7 10/10/05 D.A. 7 8 10/10/05 D.A. 8 9 10/10/05 D.A. 9 10 10/10/05 D.A. 10										SUBMITTED BY: SEBASTIAN DEGENS PREPARED BY:		DATE: EP TS 2005-3 1/4 (SU-1)	





## Exhibit C

## 2006 Portland Bulk Terminal - Storage Shed Expansion - schedule of values

Item Description	Budgeted Costs
22-Feb-05	
<b>Site Preparation</b>	
Pre-load application	\$ 347,000
Survey settlement	\$ 15,000
Electrical power relocation	\$ 79,800
Rail maint. during preload	\$ 21,000
Berm Cable Relocation	\$ -
subtotals	\$ 462,800
<b>Civil Structural</b>	
Preload removal	\$ 395,600
Excavation / backfill	\$ 76,200
Concrete foundations	\$ 1,850,900
Misc. Structural	\$ 8,000
Asphalt floor	\$ 126,000
Vehicle access to bay	\$ 21,400
subtotals	\$ 2,478,100
<b>Mechanical</b>	
Conveyor C15	\$ 323,700
Tripper rails	\$ 55,700
Conveyor C16	\$ 347,300
Cascade chutes purchase	\$ 305,300
Soft drop installation	\$ 362,300
Reclaimer rail extension	\$ 349,000
subtotal	\$ 1,743,300
<b>Electrical &amp; Instrumentation</b>	
Electrical	\$ 558,500
Instrumentation	\$ 44,200
subtotal	\$ 602,700
<b>Glulam Timber Storage Bldg - design / supply / install</b>	\$ 2,831,000
<b>Roofing</b>	\$ 365,800
<b>Roads and Drainage</b>	
Roads	\$ 180,400
Ditches	\$ 31,900
Gutters	\$ 9,000
Hydroseeding	\$ 60,000
subtotal	\$ 281,300
<b>Construction Total</b>	\$ 8,765,000
<b>Engineering</b>	\$ 264,000
Geotechnical / Surveying	\$ 15,000
Construction Management	\$ 263,000
Permitting	\$ 40,000
Misc. Indirect Costs	\$ 345,000
Spare parts	\$ 50,000
Financing	\$ 700,000.00
Sub Total - Project Overhead	\$ 1,677,000
Contingency - all	\$ 1,168,000
<b>Grand Total</b>	\$ 11,510,000

AMENDED AND RESTATED GUARANTEE  
(Canpotex)

WHEREAS, The Port of Portland ("Port"), Portland Bulk Terminals, L.L.C. (Portland Bulk), and Canpotex Limited ("Canpotex" or "Guarantor") entered into a GUARANTEE (Canpotex) ("Guarantee"), dated March 14, 1996 (Effective Date) wherein Canpotex agreed to guarantee certain obligations of Portland Bulk to the Port under that certain Ground Lease for Bulk Cargo Facility/Terminal 5, dated March 14, 1996, as amended ("Ground Lease"), and a Bulk Cargo Facility Construction Contract, dated March 14, 1996, as amended ("Construction Contract").

WHEREAS, since the Effective Date, the Ground Lease has been amended by eight (8) separate amendments as follows: Amendment No. 1 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of August 29, 1997, as further amended by Amendment No. 2 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of October 23, 1997; Amendment No. 3 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of September 9, 1999; Amendment No. 4 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of May 19, 2003; Amendment No. 5 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of July 1, 2004; Amendment No. 6 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of March 16, 2005; Amendment No. 7 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of February 15, 2006; and Amendment No. 8 to Ground Lease for Bulk Cargo Facility/Terminal 5, dated as of April 12, 2006. The Construction Contract has been completed. The parties have entered into a new construction contract dated April 12, 2006 ("2006 Construction Contract") for the expansion of the existing bulk cargo terminal facilities located at the Port's Terminal 5, with the parties intending and agreeing that all obligations thereunder shall be covered by the Guarantee.

WHEREAS pursuant to the Guarantee, Guarantor unconditionally guaranteed the full performance and payment of all liabilities and indebtedness of Portland Bulk under all terms and conditions of the Ground Lease and the Construction Contract, and confirmed and restated all of those Guarantee obligations in a subsequent GUARANTEE (Canpotex) entered into on or about December 16, 1999 ("1999 Guarantee"), and the parties now desire to incorporate both prior Guarantees into this Amended and Restated Guarantee.

NOW THEREFORE, for valuable consideration, including but not limited to the Port's agreement to issue additional bonds to fund expansion of the facilities located within the Ground Lease and to enter into the 2006 Construction Contract, and the sufficiency of such consideration being hereby acknowledged, the Guarantor agrees as follows:

1. All provisions of the Guarantee shall remain in full force and effect as originally written in 1996 and restated and expanded in 1999, except it shall be further expanded to cover the 2006 Construction Contract as it may be amended from time to time and all amendments to

the Ground Lease to date, and any additional amendment to the Ground Lease, as it may be amended from time to time. Guarantor also affirms that it shall also fully cover all amendments to the Ground Lease that have been made and may be made in the future, without need for additional consent of or notice to Guarantor. The 2006 Construction Contract may be amended at any time and from time to time by agreement of the Port and Portland Bulk and any such amendments shall also be covered by the Guarantee without the need for additional consent from Guarantor or notice to Guarantor.

2. Section 18 of the Guarantee shall be amended to include the Canpotex Shareholders' Agreement, as supplemented by the Shareholder Producer Acknowledgements executed in conjunction with the new Special Obligation Revenue and Refunding Bonds, Series 2006.

3. Section 24 of the Guarantee is amended to also reference and incorporate the above referenced Special Obligation Revenue and Refunding Bonds, Series 2006, in the amount totaling up to \$71,000,000 US ("Bonds").

4. The Notice provision found in the 1999 Guarantee is updated to change the Attention line for Canpotex Limited as follows: "Attention: Senior Vice President, General Counsel and Secretary."

Except as provided herein above, the Guarantee, as originally executed in 1996 and amended and expanded in 1999, shall remain in full force and effect and the Power of Attorney attached thereto shall remain in full force and effect with respect to all obligations contained in the Guarantee, as amended hereby.

EXECUTED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

CANPOTEX LIMITED

Accepted and Agreed to as of the above date.

PORTLAND BULK TERMINALS, L.L.C.

By: \_\_\_\_\_

Name: Ted J. Nieman

As Its: Senior Vice President, General Counsel  
and Secretary

By: \_\_\_\_\_

Name: Ted J. Nieman

As Its: Senior Vice President, General Counsel  
and Secretary

By: \_\_\_\_\_

Name: Dwayne N. Dahl

As Its: Vice President, Finance & Chief  
Financial Officer and Treasurer

By: \_\_\_\_\_

Name: Dwayne N. Dahl

As Its: Vice President, Finance & Chief  
Financial Officer and Treasurer

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**Canpotex**

**FACSIMILE MESSAGE**

**MESSAGE:** The materials accompanying this facsimile cover page contain confidential information intended only for the person(s) named above. Any other distribution, reproduction or disclosure is strictly prohibited. If you have received these materials in error, please notify us immediately by telephone and confirm that you have destroyed the original transmission and any copies that may have been made.

**Date:** April 28, 2006

**To:** Juli Kilgore, Port of Portland - 503-944-7038  
Douglas E. Goe, Orrick, Herrington & Sutcliffe - 503-943-4800  
Greg Blonde, Orrick, Herrington & Sutcliffe - 503-943-4801

**Total No. of Pages:** 7

**From:** Ted J. Nieman  
Senior Vice President, General Counsel and Secretary

**Subject:** *45-day Notice of Optional Redemption of Bonds*

---

**PLEASE NOTIFY US AT ONCE IF THIS MESSAGE IS INCOMPLETE OR UNCLEAR**

---

The attached is for your information.

Yours truly,

*T. Nieman /TJ.*

TJN/dls

cc: L.A. Helgerson

**Canpotex Limited**

P.O. Box 1600, Suite 400, 111-2nd Avenue South, Saskatoon, Saskatchewan Canada S7K 3R7  
Telephone: (306) 931-2200 Facsimile: (306) 653-5505



**Ted J. Nieman**  
**Senior Vice President,**  
**General Counsel and Secretary**

*Via Courier*

April 28, 2006

U.S. Bank National Association  
Corporate Trust Services  
PD-OR-P6TD  
555 SW Oak Street  
Portland, OR 97204

Attention: Cheryl K. Nelson, Vice President

Dear Ms. Nelson:

Re: 45-day Notice of Optional Redemption of the Outstanding The Port of Portland  
Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C.  
Project), and The Port of Portland Special Obligation Revenue Bonds, Series 1999  
(Portland Bulk Terminals, L.L.C. Project)

Enclosed for your information is the above 45-day Notice of Optional Redemption by  
Portland Bulk Terminals, L.L.C. requesting optional redemption of bonds.

Please contact me if you have any questions.

Yours truly,

TJN/dls

Enclosure

cc: D.N. Dahl

**Canpotex Limited**

P.O. Box 1600, Suite 400, 111-2nd Avenue South, Saskatoon, Saskatchewan Canada S7K 3R7  
Telephone: (306) 931-2200 Facsimile: (306) 653-5505



April 26, 2006

U.S. Bank National Association  
Corporate Trust Services  
Attention: Cheryl K. Nelson, Vice President  
PD-OR-P6TD  
555 SW Oak Street  
Portland, OR 97204

The Port of Portland  
Attention: Thomas A. Johnson, Senior Manager Corporate Finance  
121 N.W. Everett Street  
Portland, OR 97209

Re: 45-day Notice of Optional Redemption of the Outstanding The Port of Portland Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C. Project), and The Port of Portland Special Obligation Revenue Bonds, Series 1999 (Portland Bulk Terminals, L.L.C. Project)

Notice is hereby given to U.S. Bank National Association (the "Trustee") and The Port of Portland (the "Issuer") that Portland Bulk Terminals, L.L.C. (the "Company") requests the optional redemption on June 15, 2006 of all of the outstanding principal amount of the following bonds:

The Port of Portland Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C. Project), dated March 14, 1996, maturing on October 1, 2025, CUSIP No. 735260AE1 (the "1996 Bonds"), and


The Port of Portland Special Obligation Revenue Bonds, Series 1999 (Portland Bulk Terminals, L.L.C. Project), dated December 16, 1999, maturing on October 1, 2025, CUSIP No. 735260AG6 (the "1999 Bonds").

The 1996 Bonds and the 1999 Bonds (collectively, the "Refunded Bonds") are to be called and redeemed in accordance with terms and conditions of their respective authorizing ordinances and supplemental actions, subject to available funds sufficient to pay in full the principal and interest on the Refunded Bonds.

U.S. Bank National Association, as Trustee  
The Port of Portland  
April 26, 2006  
Page 2

This Notice is provided for the 1996 Bonds pursuant to Section 7.3 of Ordinance No. 379-B enacted by the Port on June 14, 1995 and Section 4 of the Supplemental Action dated March 14, 1996, and for the 1999 Bonds pursuant to Section 6.1 of Ordinance No. 399-B enacted by the Port on September 9, 1999 and Section 6 of the Supplemental Action dated December 16, 1999

PORTLAND BULK TERMINALS, L.L.C.

By:   
Dwayne N. Dahl  
Vice President, Finance,  
Chief Financial Officer and Treasurer

cc: Juli Killgore, Assistant General Counsel (juli.killgore@portofportland.com)  
Douglas E. Goe, Bond Counsel (dgoe@orrick.com)  
Greg Blonde, Bond Counsel (gblonde@orrick.com)



**Ted J. Nieman**  
**Senior Vice President,**  
**General Counsel and Secretary**

*Via Courier*

April 28, 2006

The Port of Portland  
121 N.W. Everett Street  
Portland, OR 97209

Attention: Thomas A. Johnson, Senior Manager Corporate Finance

Dear Mr. Johnson:

Re: 45-day Notice of Optional Redemption of the Outstanding The Port of Portland  
Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C.  
Project), and The Port of Portland Special Obligation Revenue Bonds, Series 1999  
(Portland Bulk Terminals, L.L.C. Project)

Enclosed for your information is the above 45-day Notice of Optional Redemption by  
Portland Bulk Terminals, L.L.C. requesting optional redemption of bonds.

Please contact me if you have any questions.

Yours truly,

TJN/dls

Enclosure

cc: D.N. Dahl

**Canpotex Limited**

P.O. Box 1600, Suite 400, 111-2nd Avenue South, Saskatoon, Saskatchewan Canada S7K 3R7

Telephone: (306) 931-2200 Facsimile: (306) 653-5505



April 26, 2006

U.S. Bank National Association  
Corporate Trust Services  
Attention: Cheryl K. Nelson, Vice President  
PD-OR-P6TD  
555 SW Oak Street  
Portland, OR 97204

The Port of Portland  
Attention: Thomas A. Johnson, Senior Manager Corporate Finance  
121 N.W. Everett Street  
Portland, OR 97209

Re: 45-day Notice of Optional Redemption of the Outstanding The Port of Portland Special Obligation Revenue Bonds, Series 1996 (Portland Bulk Terminals, L.L.C. Project), and The Port of Portland Special Obligation Revenue Bonds, Series 1999 (Portland Bulk Terminals, L.L.C. Project)

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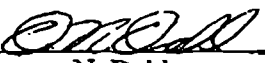
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PORTLAND BULK TERMINALS, L.L.C.

By:   
Dwayne N. Dahl  
Vice President, Finance,  
Chief Financial Officer and Treasurer

cc: Juli Killgore, Assistant General Counsel (juli.killgore@portofportland.com)  
Douglas E. Goe, Bond Counsel (dgoe@orrick.com)  
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